

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

In the Matter of

DIANE M. STRAKA

Petitioner,

v.

ARCARA ZUCARELLI LENDA
& ASSOCIATES CPAS, P.C.

Respondent,

ON THE PETITION OF DIANE M. STRAKA
FOR DISSOLUTION OF SUCH COMPANY
PURSUANT TO BUSINESS
CORPORATION LAW §1104-A

**RESPONDENTS'
PROPOSED FINDINGS OF
FACT AND
CONCLUSIONS OF LAW**

Index No. 807308/2017

Hon. Henry J. Nowak, J.S.C.
Assigned Justice

Respondents Arcara Zucarelli Lenda & Associates CPAs, P.C. (the “Corporation” or the “PC”), David A. Arcara, Jon V. Zucarelli, Donald J. Lenda and Paul Eusano, by their attorneys Zdarsky, Sawicki & Agostinelli LLP, submit the following Statement of Undisputed Facts and proposed Findings of Fact and Conclusions of Law, per the Court’s Direction, with respect to the trial held January 16, 2018, January 17, 2018, and February 9, 2018.

STATEMENT OF UNDISPUTED FACTS

The following facts are undisputed, derived from allegations of the Petition (Trial Exhibit A), admitted, in full or in part, in corresponding paragraphs of Respondents’ Answer (Trial Exhibit 15).

The Corporation is a duly organized New York professional service corporation, formed on July 10, 2014, with its principal place of business at 5214 Main St. #200, Williamsville, Erie County, New York 14221. The Corporation commenced its operations on or about January 1, 2015. (Petition ¶2).

The Corporation is authorized to issue 200 shares of common stock. (Petition ¶3).

The Corporation is not registered as an investment company under an act of Congress entitled "Investment Company Act of 1940." (Petition ¶4). No shares of stock of the Corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association. (Petition ¶5).

Petitioner served as a corporate director and as Secretary of the Corporation from the date of the Corporation's formation until her resignation as director and officer on August 12, 2016 (the "Withdrawal Date"). (Petition ¶6).

David A. Arcara ("Arcara") (President), Jon V. Zucarelli ("Zucarelli") (Vice President), and Donald J. Lenda (Treasurer) are shareholders, directors, and officers of the Corporation. (Petition ¶¶8-10).

Paul Eusano is a shareholder of the Corporation and is one of the corporate directors. (Petition ¶11).

The Corporation was formed by Petitioner Straka, Arcara, Zucarelli and Lenda as shareholders of "Arcara, Zucarelli, Lenda & Straka CPAs, P.C." for the purpose of providing professional accounting services to the public. Each of the founding Shareholders is an experienced Certified Public Accountant, is licensed as such in the State of New York, and has provided professional accounting services to their clients for some time. (Petition ¶14).

As discussed in the Court's Findings of Fact and Conclusions of Law, Petitioner alleges, in Paragraph 6 of the Petition, that she is a 25 % shareholder of the Corporation. Respondents deny that Petitioner Straka is still a shareholder, asserting that she resigned as a shareholder in her August 12, 2016 resignation letter (Trial Exhibit 10). Arcara, Zucarelli, and Lenda admit they are shareholders, as alleged in paragraphs 8-10 of the Petition, each owning either 25% or 20% of the Corporation's shares of stock, depending on the determination regarding Petitioner Straka's alleged resignation as a shareholder, though it is undisputed that Straka never surrendered her shares and the Corporation listed Straka as shareholder on its 2016 federal income tax return (Trial Exhibit 1).

Prior to the formation of the Corporation, Petitioner and Arcara were the sole owners of Arcara & Borczynski, LLP ("A&B"); Zucarelli and Lenda were shareholders of Brody, Weiss, Zucarelli & Urbanek, CPAs, P.C. ("BWZU") [(BWZU had two other shareholders: Sidney Weiss ("Weiss") and Thomas Urbanek ("Urbanek"))]. Both A&B and BWZU provided professional accounting services to the public. (Petition ¶¶ 15, 16).

A&B and BWZU did not merge to form the Corporation. Nor did either practice acquire the assets of the other. Rather, the Shareholders created a new Corporation. (Petition ¶17).

Weiss and Urbanek did not become shareholders of the Corporation; rather, they served as employees of the Corporation, providing professional accounting services to the Corporation's clients. (Petition ¶19).

Straka, Arcara, Zucarelli, and Lenda each made the same cash capital contribution to the Corporation: \$100.00. (Petition ¶20).

Straka, Arcara, Zucarelli, and Lenda agreed that each would perform work for the Corporation as they had formerly provided their prior entities, including the rendering of professional accounting services, marketing and client development, administration of human resources and overall business management. (Petition ¶22).

After extensive discussions, Straka, Arcara, Zucarelli, and Lenda agreed to a compensation plan that would allocate to the shareholders client revenues and firm expense, called the "earnings matrix" (or the "Matrix"). (Petition ¶23).

Although a draft shareholders' agreement was circulated to Straka, Arcara, Zucarelli, and Lenda, for discussion, the shareholders did not execute a written shareholders agreement. (Petition ¶24).

The Corporation forwarded periodic payments to A&B (the "A&B Advances") on behalf of Petitioner and Arcara to remit payment to the A&B founders under the terms of the A&B Agreement. (Petition ¶25).

Petitioner Straka communicated some of her concerns about Urbanek to other shareholders

of the Corporation. (Petition ¶32). Arcara spoke with Urbanek about his behavior. According to Arcara, Urbanek appeared to take the conversation seriously. When further complaints emerged and Arcara spoke with Urbanek again, Urbanek said words to the effect of "Well, this is how I am, [and] I'm not going to change." (Petition ¶33). Urbanek was confronted about his behavior (Petition ¶34).

Petitioner Straka discussed her withdrawal from the Corporation privately with Arcara. (Petition ¶42). On or around July 7, 2016, Petitioner circulated to the Majority Shareholders a draft separation agreement. (Petition ¶47).

On or around July 20, 2016, the Shareholders agreed that informal negotiations regarding Petitioner's separation from the Corporation could take place between Petitioner and Arcara, but that such discussions would be without prejudice, for settlement purposes only, and would be inadmissible in any proceeding for any purpose. In addition to negotiating Petitioner's separation from the firm, Petitioner and Arcara were also negotiating the distribution of A&B's clients and accounts that Petitioner and Arcara brought to the Corporation upon its formation (the "A&B Negotiation"). (Petition ¶50).

On August 12, 2016, Petitioner Straka resigned from the Corporation as a director and officer, and ceased performing accounting services for and on behalf of the Corporation. (Petition ¶53).

On August 17, 2016, the Corporation filed a certificate of amendment with the New York State Division of Corporations to change the Corporation's name from Arcara, Zucarelli, Lenda & Straka CPAs, P.C. to Arcara Zucarelli Lenda & Associates, CPAs, P.C., removing Petitioner's surname from the Corporation's name. (Petition ¶54).

On September 8, 2016, the Corporation provided Petitioner with the Matrix updated through her Withdrawal Date. (Petition ¶55).

Petitioner objected to adjustments regarding WIP (work in process) and certain expenses on the Matrix, including a retainer paid by the Corporation to retain counsel regarding this matter. (Petition ¶58, 59).

On October 14, 2016, Petitioner emailed Zucarelli asking when the Majority Shareholders

anticipated responding to her September 9, 2016 email. On October 17, 2016, Zucarelli responded to Petitioner by stating that the Majority Shareholders had provided the information to counsel "three weeks ago" and that they "wanted the attorneys to handle the sharing of information." (Petition ¶61).

On October 31, 2016, the Corporation provided: (a) the Corporation's updated Matrix, (b) an interim worksheet, (c) the Corporation's profit and loss statement, (d) the Corporation's balance sheet, (e) a period reconciliation, (f) a general ledger, (g) a WIP summary, and (h) the Corporation's bank statement, updated through Straka's August 12, 2016 withdrawal date. (Petition ¶62).

PROPOSED FINDINGS OF FACT

1. At the end of April 2016, Petitioner Diane Straka claims she informed David Arcara, Jon Zucarelli, and Donald Lenda (the "Majority Shareholders") that she wanted to withdraw from Arcara, Zucarelli, Lenda and Straka, CPAs P.C. as a shareholder and director and intended to consider her options.

2. In June 2016, Ms. Straka told the Majority Shareholders that she intended to withdraw from the PC as a shareholder and director, and she would stop performing accounting services for the PC in four to six weeks.

3. Tronconi, Segarra & Associates, LLP ("Tronconi") hired Ms. Straka in 2016, as a principal of Tronconi's Accounting & Auditing/Small Business Departments.

4. Ms. Straka became a partner of Tronconi in 2017 (Transcript, 2/9/18, p.158, lines 1-10).

5. On August 12, 2016, Ms. Straka resigned, in writing, as a shareholder, director, and employee of the PC, in a letter signed by Ms. Straka (Trial Exhibit 10).

6. Ms. Straka signed a Written Consent of Board of Directors and Shareholders of Arcara, Zucarelli, Lenda and Straka, CPAs P.C., dated August 12, 2016, to remove her name in an amendment to the PC's Certificate of Incorporation (Transcript, January 16, 2018, pp.133-134).

7. The original Certificate of Incorporation of the Corporation was filed with the New York State Department of State on July 10, 2014, under the name of Arcara, Zucarelli, Lenda

& Straka, CPAs, P.C.,

8. No Shareholders' Agreement exists for the PC.

9. The Bylaws of the Corporation do not provide for redemption of shares for a shareholder, except upon the death of a shareholder or the shareholder's disqualification to practice the accounting profession.

10 Ms. Straka received a letter dated February 22, 2017, with enclosed Notice of Special Meeting of the shareholders of Arcara Zucarelli Lenda & Associates CPAs, P.C., addressed to Ms. Straka, from David Arcara, as President of the PC (Trial Exhibit 16).

11. Ms. Straka did not attend the March 7, 2017 Special Meeting of the shareholders of the PC.

12. Each of the shareholders assumed administrative duties for the PC.

13. Ms. Straka was put in charge of IT matters for the PC, prior to her August 12, 2016 resignation.

14. David Arcara handled Human Resources issue, Jon Zucarelli handled day to day accounting operations for the PC, and Donald Lenda handled quality assurance and compliance issues.

15. The PC, and its shareholders, agreed to follow Ms. Straka's lead with respect to additional software and IT infrastructure, including paperless audit software (fully implemented by August 12, 2016), practice management software, and tax preparation software (75% implemented by August 12, 2016) used by Arcara & Borczynski, LLP, prior to Ms. Straka's August 12, 2016 resignation.

16. The PC followed Ms. Straka's lead on website design, email protocol, secure client portal structure, prior to her August 12, 2016 resignation.

17. A Confidentiality Agreement, among the shareholders of the PC, was signed and acknowledged by Ms. Straka on October 25, 2016 (Trial Exhibit S, admitted Transcript, 2/9/18, p.117).

18. A November 23, 2015 Proposal for Outsourced HR Services and Support, of Triple Track HR Partners was approved by Donald Lenda, on behalf of the PC, on December 12, 2015 (Trial Exhibit P).

19. The PC hired Triple Track HR partners, at least in part, to assist Mr. Arcara regarding handling and documentation of Ms. Straka's complaints about Thomas Urbanek.

20. The PC held sexual harassment seminars in its office, conducted by Triple Track HR partners, beginning June 6, 2016 (Trial Exhibit R) in addition to a monthly retainer paid to the consultants.

21. The PC's ten year Lease Agreement for its Williamsville, New York offices (Trial Exhibit B) extends to November 30, 2024.

22. Though Ms. Straka's August 12, 2016 resignation letter (Trial Exhibit 10) states she resigned as a shareholder, employee, and director of the PC, Ms. Straka, upon leaving, expected the PC would redeem her shares, under terms prepared by her counsel, in early July 2016.

23. Ms. Straka signed a Confidentiality Agreement, on October 25, 2016 (Trial Exhibit S), also signed by her attorney, Mr. Ross, who insisted that the PC's counsel change the draft to reflect the fact that Ms. Straka resigned as a shareholder (Transcript 2/9/18, pp. 154-155).

24. Ms. Straka received the PC's Notice of a March 7, 2017 Shareholder Meeting on or about February 22, 2017 (Transcript 2/9/18, pp. 156, 162).

25. Ms. Straka never came to terms with the PC regarding redemption of her shares and never surrendered her shares (Transcript 2/9/18, p. 157).

26. Ms. Straka considers herself to be obligated as a shareholder on the PC's line of credit and considers herself to be obligated as a shareholder on other firm obligations such as payroll (Transcript 2/9/18, p. 157).

27. Conversion of the PC's tax software from Lacerte (used by the Brody Weiss firm) to UltraTax, as part of an integrated software suite did not proceed as Ms. Straka planned because staff just did not follow through with the conversion plans (Transcript 2/9/18, p. 157).

28. On June 4, 2015, Ms. Straka sent an email to all shareholders and staff at the PC, entitled “Tax Software Update” regarding the firm’s plan to continue converting to UltraTax, acknowledging “some concerns with UltraTax” that were being worked out with Thomson Reuters, the software publisher (Trial Exhibit H). In the June 4, 2015 email, Ms. Straka outlined priorities for the continued conversion of business and individual returns, announced a June 25 training session for further conversions, and advised that conversion should be done when time is available, without expecting anyone to put in overtime. Ms. Straka concluded by stating that “if there are still personal returns that are not converted by the end of December, then depending on how many are left, Lacerte may be used for those for 2015. And the plan would be to continue to convert those next year.”

29. Shortly after sending her June 4, 2015 tax software update email, Ms. Straka learned the PC was purchasing 2015 Lacerte tax preparation software, when an administrative employee provided a June 9, 2015 bill (Trial Exhibit 4) submitted for payment by Mr. Lenda. Ms. Straka was surprised and felt a little insulted that she was not consulted regarding the deeply discounted purchase of 2015 Lacerte, because the PC then had seven months to complete the conversion to UltraTax (Transcript 2/9/18, p. 162).

30. Per a July 21, 2016 email sent to Mr. Zucarelli at 9:10 pm, copied to the other shareholders and their counsel (Trial Exhibit 7), Ms. Straka advised that she could not access the firm’s Quickbooks software, due to a password issue.

31. By email the following day at 2:11 p.m., Mr. Zucarelli advised Ms. Straka that he inadvertently locked the other shareholders out of Quickbooks when he ran an update of the software that required him to change his password (Trial Exhibit N).

32. On June 22, 2016, Mr. Zucarelli, after a failed attempt to talk Ms. Straka into staying at the firm, following the completion of mostly positive employee evaluations on the heels of the PC’s second tax season, responded to an email that day from Ms. Straka and reiterated that he was “very disappointed you will not be with us; I also wish that we can make it

the least painful as possible.” Ms. Straka’s email to Mr. Zucarelli stated “I just wanted to let you know I didn’t plan on getting upset like I did yesterday. This isn’t easy for me either and not what I intended when we merged. So I hope this goes better going forward.” (Trial Exhibit L).

33. When Zucarelli and Lenda met with Ms. Straka on June 21, 2015 to discuss her announced withdrawal from the PC, they attempted to convince Ms. Straka to stay with the PC, but Ms. Straka advised that she had made up her mind and had reached out to Joe Falbo of the Tronconi firm, where she was going to end up. (Transcript, January 17, 2018, pp. 105-108).

34. In late June 2016, after advising the other PC shareholders that she was leaving the PC to join a competing firm, Ms. Straka exchanged text messages with David Arcara regarding contact with audit clients of the PC, including one client who Ms. Straka said “would propose it as staying with Arcara or moving with me at the other firm.” (Trial Exhibit 12).

35. A year earlier, Ms. Straka, in June 16-17, 2015 emails to Mr. Arcara (Trial Exhibit 6), discussed her philosophical differences, unhappiness and frustrations, seven months into the new venture. Regarding those emails, Ms. Straka testified (Transcript, January 16, 2018, pp. 101 (line)-104 (line 23)):

Q. Okay. Now, do you have Exhibit 6 up there?

A. Yes.

Q. This is a series of e-mails between you and David Arcara in 2015, correct?

A. Yes.

Q. Now, if you look at the first page, there's an e-mail you sent to David Arcara on June 17th, 2015 at 2:28 p.m., correct?

A. Yes.

Q. And in that e-mail you say you appreciate -- let me quote it. I appreciate your concerns -- in the second paragraph. I appreciate your concern for how I feel and it helps having your understanding and support. You see that?

A. Yes.

Q. And then you say and I do agree that step one is deciding if AZLS can work. You see that?

A. Yes, yes.

Q. And then you say, other than Tom, I still don't think I've completely come to a conclusion as to how I feel about the BWZU partners in general. You see that?

A. Yes.

Q. And Tom you're referring to is Mr. Urbanek,

correct?

A. Yes.

Q. And you say there have been issues where I do feel that they either don't respect me or it's just every man for himself and it's not specific to me/women, it's just how they are, correct?

A. Yes.

Q. And then you say, I feel if Tom is out of the picture, some issues would go away, correct?

A. Yes.

Q. Did you ever bring that feeling up to all the partners at a partnership meeting that you -- Tom should go away?

A. We had discussions about Tom.

Q. That wasn't my question. My question was, at a partnership meeting with the partners -- not partnership meeting, at a corporate meeting with the shareholders, did you ever bring up that Tom should go?

A. Yes.

Q. When did you first do that?

A. That, I don't recall the specifics, but there were discussions about Tom and his timeline for leaving.

Q. Okay. And there were discussion -- but did you say he's got to go or I got to go?

A. I did not say that.

Q. All right. So you had discussions about his timeline for leaving, correct?

A. Yes.

Q. And was it your understanding that he was being in the process of being bought out as a former shareholder of the BWZU group just like you and David were paying on the buy-out for Chet Borcynski and Joe Arcara, correct?

A. At the time we were merging, he was -- we discussed that he would be retiring. The expectation is that he would retire in a year in general. I was not involved in his negotiations so I can't attest to his buy-out terms.

Q. Okay. But here you're saying, I feel if Tom is out of the picture, some issues would go away, correct?

A. Correct.

Q. And then you say something about, it told me a lot that Dawn says she doesn't like Jon after working for him all those years. You see that?

A. Yes.

Q. Was it your expectation when you got into this new venture that everybody was going to be the best of friends all the time?

A. Well, we were in a work environment. I expected us to get along while we were working.

Q. Wasn't one of the reasons that the group decided to get together is that one group, your group focused primarily 75 percent on audit work and the other group

focused about the same percent on tax work?

A. We decided to merge to become a more balanced firm between audit and tax.

Q. And one of the things that your firm brought to the equation was that you were -- you had already gone through this paperless project in your firm, correct?

A. Yes.

Q. And you were bringing maybe a fresher looking technology to the new group, correct?

A. Yes.

Q. As you said, you had some younger people in your group, correct?

A. Yes.

36. Ms. Straka, in her June 2015 emails to Arcara, also expressed concern about the pace of meshing the constituent firms' technology in the new PC (Transcript, January 16, 2018 pp. 105 (line 17) -111 (line2):

Q. Now, the staff and some of the ex-partners like Mr. Urbanek from the other group are older, correct?

A. Mr. Urbanek is older, yes.

Q. Well, other people in the group are older too, weren't they?

A. The age range varied. Young to old.

Q. But you testified on direct that Mr. Urbanek didn't use a computer, correct?

A. Yes.

Q. So he was different than the young people coming from the majority of, as you say, our staff that is young, correct?

A. Well, he did not use a computer like everybody else.

Q. So he was different than the young people that you were talking about here who wanted to advance technologically, correct?

A. He was not in -- referred to in that sentence, yes.

Q. He was not in sync with what you were saying, the younger people in your group were, say, like-minded, right, is that fair to say?

A. Yes.

Q. Okay. So you were trying to convert in the first tax season after you -- the firm had occupied the new offices, to this Ultratax, correct?

A. Yes.

Q. And when you came into this group, is it fair to say that the percentage of total tax returns that had been done when you first put the group together, about 75 or 80 percent of the tax returns were being done by BWZU?

A. Each individual partner, Don, Jon, myself and then

also at the time Sid and Tom had returns, each individual partner had in general the same number of returns.

Q. So when you combined them, what I'm saying is you said that your work at A&B was 75 percent audit, 25 percent tax, correct?

A. In general.

Q. All right. And the other firm and you're about the same size with staff, weren't you, when you got together?

A. Arcara Borcynski was larger.

Q. By what, one or two people?

A. Less than five people --

Q. Okay.

A. -- I would say.

Q. So when you got together, there were more tax returns that had started with the old group, they had more of the tax returns in the combined group than had come from A&B, is that fair to say?

A. There were more returns in Lacerte, the old program that had to be converted to Ultratax, yes.

Q. And you wanted to do that as quickly as possible to be more efficient, right?

A. Yes.

Q. And you were getting some resistance from that from the BWZU people, correct?

A. Yes.

Q. Because they were used to working with the system they had used for many years?

A. Yes.

Q. And you wanted it to go more quickly than it was going, is that fair to say?

A. Yes.

Q. Okay. And in fact, we marked two exhibits where Mr. Lenda had put -- either requested reimbursement or submitted some -- some invoices, Exhibits 3 and 4 in evidence, to keep the Lacerte tax program in place for the 2014 tax year and the returns that would be done in 2015, that's Exhibit 3, right?

A. Yes.

Q. And then Exhibit 4, there was a request to have the program updated, this was in June of 2015 for the 2015 tax year, correct?

A. Right. Exhibit 4 was the payment for the next year's program.

Q. And you were not happy about that, because you wanted the conversion to be done quicker, more quickly, correct?

A. That would have been our second tax season and to decide already in June to use Lacerte the following year was premature and I wasn't even consulted about this.

Q. But if there was still going to be returns done in Lacerte because people hadn't converted yet, would you still

need to have that tax software so you could do returns in Lacerte?

A. If you did not convert --

Q. Well, if there were people who were resisting conversion at the pace you wanted and you still had people doing Lacerte returns, weren't you going to need the tax software so you could do those returns?

A. Yes. If you do not convert it, you would need Lacerte, yes.

Q. And so you say in the second paragraph that -- so I feel I have philosophical differences with BWZU partners. You see that?

A. Yes.

Q. And then you say, with all that, I have felt each time I think about the above that I conclude that I'm not generally liked and that I see things differently. You see that?

A. Yes.

Q. And you say, I'm trying to figure out if I just need to adjust to it with some of it being growing pains, correct?

A. Yes.

Q. And then you say, and some of it not being realistic like how we operated in our smaller firm just doesn't translate to a bigger firm, correct?

A. Yes.

Q. Now, were there some problems -- you talked about the culture that you came from and the culture you wanted, but were there problems when you had two different groups coming together with people trying to get along with each other, working with each other?

A. There were differences in procedures that caused issues.

Q. Right. And that took some time to work through, correct?

A. They were not really worked out, but yeah.

Q. But it was going to take -- you knew it was going to take some time to deal with some of those issues, correct?

A. Yeah.

Q. It wasn't going to happen like that, was it?

A. No. And especially with additional resistance, it certainly wouldn't.

37. In response to Ms. Straka's concerns in her June 2015 emails regarding her perception of disrespect, primarily from Mr. Urbanek, Ms. Straka acknowledged that Mr. Arcara agreed with her perception and that any disrespect toward females at the PC was inappropriate (Transcript January 16, p.112 (line 6)-115 (line 3)):

Q. I'll move on. And then in the next paragraph, you start out by saying, if AZLS and that's the corporation, correct?

A. Yes.

Q. Is not the choice, then we have to figure out the next step, correct?

A. Yes.

Q. All right. And then below that is -- so this is a typical e-mail chain, we're going in reverse order, there's an e-mail from David at 7:42, correct?

A. Yes.

Q. And in here, this was the -- the comment that your counsel pointed you to, saying that what I can say is that I can relate to your feelings in that I have the wife who is educated, smart, strong and driven and if any of her co-workers disrespected her because she is a female, I would be furious. You see that?

A. That is -- yes.

Q. That's David telling you that, correct?

A. Yes.

Q. And he says, you and I have worked together a long time so I'm upset enough with what has gone on, you and her are alike in those qualities. You see that?

A. Yes.

Q. And then he says, if you cannot go on in our surroundings, I understand. And if you want to do something else together, then off we go to plan the next phase. You see that?

A. Yes.

Q. And then it says, if we decide to have another meeting with them before making that decision, then I'm thinking we would want to consider having all four of them in the room. Maybe not, not sure. You see that?

A. Yes.

Q. And lay all the issues on the table. You see that?

A. Yes.

Q. Then the next paragraph was a comment about reviews that were being done, it says BWZU reviews. Do you know what that means?

A. That is Dave's writing. I would assume that would be the former Brody Weiss employees.

Q. Okay. So then -- so David's e-mail, again, we're going in reverse order, and you're asking David that day, June 16th, you say that you're asking David if he has any further thoughts about what you had discussed last week?

A. Yes.

Q. Okay. And then you say between you and me, it seems like AB is getting close to having melt down. You see that?

A. Yes.

Q. Now, is AB a person or is AB a firm?

A. That meant -- that was a person, Alicia Brienlinger.
 Q. Okay. Is there any reference in here to Alicia complaining about any comments by Tom Urbanek or anybody else in here?
 A. I do not see any in here.
 Q. All right. She's -- she's stressed because of the work, right?
 A. There were various factors on why she was stressed.
 Q. All right. And you list them here, correct?
 A. Let's see. Whereabouts is that? Okay, I see it.
 Q. There's nothing about harassment by Mr. Urbanek in here, is there?
 A. No, but she was getting stressed because she was not going to have sufficient staff for her audits that she was managing.
 Q. Okay. And throughout the time you were at the corporation, there were issues about allocating staff after you had combined the two groups, isn't that true?
 A. There were issues, yes.

38. In an October 2015 email exchange with David Arcara, Ms. Straka further detailed her frustration with staff complaints, scheduling issues and her unhappiness at the PC (Transcript, January 16, pp. 115 (line 7)-118 (line 22)).

Q. All right. And this is just to denote that this was some -- is this something you attached to an e-mail to David?
 A. Yes. There was a scheduling meeting in October and the staff was questioning the assignments as again, because we were short staffed and they essentially complained about them, one staff in particular. And, you know, I responded back. I'm normally a very calm, collected person, but, you know, worked hard on trying to work on the schedule, every time with Dave, we came up with it, and based on the response from the staff, I -- you know, I responded back to him in not my usual calm and collected manner.
 Q. All right. So you said I want to apologize for snapping on Friday, correct?
 A. Yes.
 Q. And you were frustrated with dealing with some of the staff issues, correct?
 A. Trying to schedule, yes.
 Q. Okay. And then the next paragraph you're referring to Alicia again, but someone named Mike. Who is Mike?
 A. Mike was an audit person, an audit staff that came

from Arcara & Borcynski.

Q. And his last name is Coty, C-O-T-Y?

A. Yes.

Q. And there were some issues about Mike's well-being and there's a reference, it says Mike's well-being and opinion is what matters most to the firm, nobody else's, not even a partner's opinion. Are you talking about that was what Mike was projecting to you?

A. No. The fact that -- that's where it started because Mike was assigned in that schedule meeting on one of my audits because he had worked on it previously. Mike -- we had known Mike was not happy for various reasons at the firm. And then he followed up, from what I understand, with other staff complaining and that he was on that job and two seniors were on that job and, you know, everyone wanted to -- it seemed like to me bend backwards to make Mike happy so he wouldn't leave the firm.

Q. But Mike left the firm, didn't he?

A. He left the firm at some point in 2016 --

Q. He went to the Buffalo News?

A. -- after I left.

Q. All right. He went to the Buffalo News, is that your understanding?

A. Yes.

Q. And did you try to convince him to go to your new firm after he left?

A. No.

Q. Did you ask if he wanted to go back to public accounting, that maybe he should join you?

A. No.

Q. All right. Now, you say after that discussion about Mike, quote, I obviously have no respect and haven't earned it with anyone and I'm sure my snapping on Friday didn't help a bit. Are you talking about with the staff?

A. Based on how I was treated by partners in front of the staff, without respect, that's what I was referring to, that it just seemed like I didn't have respect or authority.

Q. But you say you haven't earned it, right?

A. According to the staff, because that's how they seen I was treated.

Q. Okay. And then if you go down to the second last paragraph on this page, you say that I just feel when others complain about their situation, I mentioned what bending I have done to show we're all sacrificing. Do you see that?

A. Yes.

Q. And you say the people that are complaining have just seemed so self-centered, it's frustrating. You see that?

A. Yes.

Q. Are you talking about the staff?

A. Yes. In there, I'm talking about the staff.

Q. And then you say, but I feel even by me saying

this, I'm being petty and need to grow up. I'm partner and need to do what's necessary, correct?

A. Yes.

Q. And then you say, but like I said, I'm just so frustrated, the complaining, self-centeredness and threats to find another job if we don't do what they want and anything, doing something or doing nothing is the wrong thing to do and then we hear about it, correct?

A. Yes.

Q. And then you say, again, here's all my reasoning on why I snapped, correct?

A. Skipping past the merger issue, yes.

Q. Skipping past the merger issue, correct. So you were frustrated, as you explained here, about the petty complaints of your staff, correct?

A. Yes.

39. In an October 21, 2015 email to Mr. Arcara, Ms. Straka wrote (Transcript, p. 120, lines 2-12):

what is the point of trying to make AZLS work anymore? I really am not happy with any aspect of it now and I don't know if it will get any better even with other staff, correct?

A. Yes.

Q. And you say, I am so disappointed I feel this way, correct?

A. Yes. It certainly did not meet my expectations.

Q. You were disappointed, correct?

A. Yes.

40. Without first speaking to Zucarelli and Lenda, Ms. Straka arranged for employee credit cards to be issued, via M&T Bank for PC employees, which required each shareholder to sign new guaranties with M&T Bank. Neither Zucarelli nor Lenda agreed to such guaranties. (Transcript, January 16, 2018, p. 142).

41. On July 5, 2016, the PC received a letter from United Church Manor, a client of the PC, requesting a donation. Mr. Arcara testified that he believes he approved payment of \$150.00, in Ms. Straka's absence.

PROPOSED CONCLUSIONS OF LAW

Business Corporation Law §1104-a provides for relief to shareholders of a close corporation

when the directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders.

Although the term 'oppressive actions' is not statutorily defined, the Court of Appeals has held that “oppression should be deemed to arise . . . when the majority conduct substantially defeats expectations that, objectively viewed, were both reasonable under the circumstances and were central to the [shareholder's] decision to join the venture” *Matter of Kemp & Beatley [Gardstein]*, 64 NY2d 63, 73 (1984).

“Majority conduct should not be deemed oppressive simply because the petitioner's subjective hopes and desires in joining the venture are not fulfilled. Disappointment alone should not necessarily be equated with oppression”. *Id.*

Because dissolution is a drastic remedy, the Courts should attempt to avoid it where possible, and permit it only when there is no other effective way to afford the petitioner a recovery. *Id.*

Mere disappointment and unfulfilled hopes and desires are insufficient to satisfy the oppressive action requirement. *In re Quail Aero Service, Inc.*, 300 A.D. 2d 800 (3d Dept. 2002).

Judicial dissolution is not authorized under BCL 1104-a because the parties no longer get along or that they disagree about how things should be done, even where the party who wants to withdraw is willing to divide the business in the fairest and most generous way. *See, e.g. Mardikos v. Arger*, 116 Misc. 2d 1028, 1031 (Sup. Ct. Kings Co. 1982) (at-will “no fault” corporate dissolution is not authorized in New York: evidence of conduct which fair-minded people would find objectionable is required; also holding that corporation properly expended corporate funds to defend against a minority shareholder’s BCL 1104-a dissolution proceeding). *Id.*, citing *Matter of Beshar*, (NYLJ, Feb. 18, 1981, p 6, col 1), affirmed 82 A.D. 2d 1021 (1st Dept. 1981), cited favorably in *Matter of Rosen*, 102 A.D. 2d 855 (1st Dept. 1984). To hold otherwise would authorize “at will” dissolutions not recognized in New York.

In BCL §1104-a dissolution proceedings, deference is given to the credibility determinations and factual findings of the trial court [*see St. Lawrence Factory Stores v Ogdensburg Bridge & Port*

Auth., 121 A.D. 3d 1226, 1227 (3d Dept. 2014), *lv denied* 25 N.Y. 3d 907 (2015)], though appellate review of Supreme Court's determination . . . 'is not limited to whether [its] findings were supported by credible evidence; rather, if it appears that a finding different from that of Supreme Court is not unreasonable, the Appellate Division must weigh the probative force of the conflicting evidence and the relative strength of conflicting inferences that may be drawn, and grant judgment as warranted. *Matter of Sunburst Assoc., Inc.*, 106 A.D. 3d 1224, 1225 (3d Dept. 2013), quoting *Hunt v Hunt*, 222 A.D.2d 759, 761 (3d Dept. 1995).

Petitioner alleged and testified that Thomas Urbanek a non-shareholder employee of the PC, and former member of the Brody Weiss firm, made demeaning, sexually discriminatory statements to her in January 2015, when she first met Mr. Urbanek, asking if Ms. Straka was the one who make him coffee (Transcript, January 16, 2018, pp. 19). Ms. Straka reported that initial interaction to David Arcara, who agreed that Mr. Urbanek's statement was inappropriate. At trial, Ms. Straka submitted a caveman cartoon (Trial Exhibit 2), which she had seen on Mr. Urbanek's door in January 2015, but the cartoon, which Ms. Straka searched for a few months later, was not referenced in the Petition or brought up with any of the other PC shareholders. (Transcript, January 16, 2018, pp. 19-22, 78-79, 136).

Ms. Straka testified that, in October, 2015 Mr. Urbanek made another inappropriate comment to her, asking if he could sit on her lap, as he entered the PC's conference room for a meeting, in Donald Lenda's presence. Ms. Straka said she told Urbanek to "sit on Don's lap and that was the end of it." (Transcript, January 16, 2018, pp. 78-79, 136-139). Ms. Straka reported that incident to Arcara, who "sounded offended." (Transcript, January 16, 2018, p. 139, lines 6-11).

Though Mr. Lenda and Ms. Straka differed in their recollection of the exact words used by Mr. Urbanek, Mr. Lenda agreed with Ms. Straka that the remark was inappropriate.

Ms. Straka testified that Mr. Urbanek made other demeaning comments to the PC's female employees, including one specific comment to Mary Bostwick, to the effect that they must have made the CPA easier for women. Though Ms. Straka acknowledges that Urbanek was counseled,

she maintains that more should have been done by the majority shareholders.

In response to Petitioner's communication of her concerns about Thomas Urbanek to other shareholders, on behalf of the PC, Arcara, Zucarelli, and Lenda testified that they all treated the matter seriously and took action. Zucarelli, who knew Urbanek the longest from their work at Brody Weiss, was enlisted to discuss the matter directly and told Urbanek to knock it off (Transcript, January 17, 2018, p. 103). Arcara, the firm's HR director, twice spoke to Urbanek to address complaints about his demeaning behavior toward women, telling Urbanek "you've got to stop." (Transcript, January 17, 2018, p. 28). Arcara testified that Urbanek took the discussion seriously. *Id.* After a second meeting, when Urbanek said he was not going to change who he is, the PC, through Arcara, decided to seek guidance from a Human Resources consultant. (Transcript, January 17, 2018, p. 29). Mr. Arcara believed such assistance was needed to document properly progressive disciplinary steps for all PC employees, including Urbanek. (Transcript February 9, 2018, pp. 29, 76-77, 81-82).

On December 12, 2015, Lenda signed the PC's agreement to engage a professional Human Resources firm, Triple Track HR Partners ("Triple Track HR"), a woman owned business enterprise, (Trial Exhibit P), after interviewing Triple Track HR and ADP as HR consultants to consult with the PC about concerns stated by Straka and others. (Transcript February 9, 2018, pp. 78-81). The PC implemented measures proposed by Triple Track HR, including an annual Harassment Prevention seminar with Triple Track HR, in addition to its monthly retainer engagement with Triple Track. All shareholders, except Straka, and most PC staff, including Urbanek, attended Triple Track's June 6, 2016 Harassment Training, held at the PC's office (Trial Exhibit R). (Transcript February 9, 2018, pp. 82-84). Arcara testified that no further complaints were received about Urbanek after the firm engaged Triple Track. (Transcript February 9, 2018, p. 89, lines 19-24)

Shortly before engaging Triple Track, Mary Bostwick, who was hired at the formation of the PC to work primarily with Urbanek, resigned in November 2015, and had stated concerns about Urbanek's control over her work assignments, and Urbanek's inappropriate remark about her passing

the CPA remark, demeaning to Bostwick, and women generally. Ms. Bostwick, in her written resignation form (Trial Exhibit C), stated she was leaving for an exceptional opportunity, with a more clear path to advancement, as well as other contributing factors, including not an ideal work situation and unresolved HR issues. (Transcript, February 9, 2018, pp.66-70).

Ms. Straka testified, without specifics, that Alicia Breinlinger and Terri Hanly complained about Urbanek, but in their resignation forms, neither woman cited harassment or complaints. Ms. Breinlinger, who left the PC on April 29, 2016, wrote that she was leaving, after 15 years, for more challenges, to further her career by increasing the types of audits and accounting work. (Trial Exhibit D). Ms. Breinlinger had worked at A&B and left the PC to work for Tronconi, just preceding Ms. Straka. Ms. Hanly, who left the PC on October 29, 2015, to work for Tronconi, advised that she accepted another position (Trial Exhibit E), without citing any gender discrimination or alleged harassment in her resignation form. (Transcript February 9, 2018, pp. 85-89).

Petitioner alleges her proposals for firm credit cards were not adopted and her plan for a speedy progression to an all digital format was not implemented. Such allegations regarding Petitioner's subjective disappointments and unfulfilled hopes and desires are insufficient as a matter of law to satisfy the requirements for stating a claim for the drastic remedy of dissolution, based on oppression.

Proof of settlement negotiations after Ms. Straka resigned and moved to the Tronconi firm, where she became a partner in 2017, are inadmissible, pursuant to CPLR §4547, and cannot sustain a claim of oppression, within the meaning of BCL§1104-a(a)(1).

Though Petitioner's Order to Show Cause mentions BCL§1104-a(a)(2), no allegations were asserted in the Petition and no proof was offered at trial to provide any basis for a claim for looting, waste, or diversion of corporate assets.

Petitioner, as early as June 2015, after the PC's first tax season, expressed remorse about the new venture to Arcara, with whom she had worked and managed A&B, as equal 50/50 partners, with Straka acting as the primary tax partner. In the new venture, Straka was one of four equal

shareholders, and two directors who also focused on tax matters, Zucarelli and Lenda, with Arcara and Straka working mostly on audit matters. (Transcript February 9, 2018, pp. 110-113).

Though the Brody Weiss firm, prior to formation of the PC, prepared over 1100 tax returns annually, more than four times the volume of returns A&B had prepared prior to the late 2014 formation of the PC, the shareholders of the new Corporation assented to Straka's management of a plan, using her prior A&B experience of converting to paperless storage, to streamline returns through UltraTax, part of an integrated accounting software suite offered by Thomson Reuters, rather than the Lacerte tax software, an Intuit product used at Brody Weiss. Ms. Straka became frustrated with the pace of conversion and discord among staff (Trial Transcript, February 9, 2018, pp. 65-66, 110-113) but recognized, in a June 4, 2015 email memorandum to all PC personnel (Trial Exhibit H) that Lacerte software might still be needed for 2015 returns, if conversion had not been completed by the end of 2015.

Ms. Straka was critical of the PC's renewal purchases of Lacerte software for 2014 and 2015 returns (Trial Exhibits 3 and 4), despite her recognition that the conversion pace was not as swift as she had hoped and that Lacerte returns were still being prepared. While the evidence shows some disagreement about Straka's concern about the PC's renewal purchase of Lacerte software in 2015, the record also shows that the PC's last renewal of Lacerte was purchased at deep discount by Lenda, on June 9, 2015, five days after Straka's memo to all PC directors and staff, recognizing that Lacerte software might still be used for 2015 returns, prepared after December 2015.

The parties' disagreement concerning conversion of the software for Lacerte to UltraTax, at most, revealed a genuine conflict of opinion between Straka, who had expressed her genuine desire to hasten the pace of conversion, and Lenda, who purchased Lacerte, for personal returns only, at a discounted price. Such disagreement is not oppressive conduct under BCL §1104-a.

The PC followed Ms. Straka's IT recommendations, including website design, email protocol, secure client portal structure, in addition to accounting software program recommendations, including paperless audit software, an accounting and tax research program, practice management

software, and tax preparation software previously used by A&B. Far fewer tax returns were done by A&B than by the BWZU firm prior to formation of the PC. Petitioner's recommendations required time commitments by professional staff and administrative time to convert from BWZU's Lacerte tax software to UltraTax software used at A&B. Ms. Straka expressed her disappointment with the pace of conversion, but there is no evidence to support the implication that the conversion process did or could constitute oppression of Ms. Straka as a minority shareholder.

After Ms. Straka announced her decision to leave the PC to her fellow shareholders, which she asserts occurred after tax season, in late April 2016, and after Ms. Straka had confirmed, in June 2016, that she had agreed to join the competing Tronconi firm, and after Ms. Straka had retained counsel and submitted, in July 2016, a proposed separation agreement to the PC's other shareholders, Ms. Straka alleges that on July 21, 2016, Zucarelli locked her out of the PC's Quickbooks (Trial Exhibit 7). That problem was remedied the next day, July 22, 2016 at 2:11 (Trial Exhibit N). Zucarelli then advised Straka and the other shareholders that he realized that when he changed the Quickbooks password, as required to update the program, he inadvertently locked out Straka, Arcara, and Lenda from the program. The Quickbooks event does not constitute minority shareholder oppression. The problem was resolved by Zucarelli in less than 24 hours and occurred after Straka advised fellow shareholders she was resigning from the PC to take a position with a competing public accounting firm. This issue could not have been the reason for Straka to quit the PC because she had already crossed that bridge.

Similarly, Straka's testimony and allegations concerning her expectations that the Majority Shareholders would redeem her shares, according to her proposed July 2016 agreement, cannot form the basis for an oppression claim. By that time, Straka had announced that she was leaving and committed to join the Tronconi firm, where she was hired as principal and soon became a partner.

The Court has carefully considered Ms. Straka's testimony regarding gender demeaning comments made to her in January 2015 and October 2015, acknowledged as inappropriate by the others PC shareholders, as well as her genuine frustration and disappointment regarding the PC's

handling of her two complaints about Mr. Urbanek's improper comments to her. Ms. Straka's expression of her genuine concerns and complaints about Urbanek's inappropriate comments concerning her and other female employees was communicated to the other shareholders, primarily David Arcara, who handled Human Resource administrative duties for the PC. The Court has also considered Ms. Straka's testimony concerning a specific complaint by Mary Bostwick regarding Mr. Urbanek's comment about women passing the CPA exam. Though Ms. Straka could not recall whether she brought Trial Exhibit 2, an offensive, sexist cartoon she saw on Mr. Urbanek's door, to the attention of her fellow shareholders, the Court accepts and credits Ms. Straka that the cartoon was offensive and disrespectful to women, as were Urbanek's inappropriate, demeaning comments to her and to the Corporation's female staff.

Mr. Urbanek's behavior and offensive conduct may well be pervasive enough to state a claim for discrimination under the New York Human Rights Law (Executive Law Section 290, et seq.) or under federal equal employment opportunity and civil rights statutes and regulations. While Ms. Straka may successfully contend that the PC and her fellow shareholders did not respond adequately to Mr. Urbanek's conduct, under such discrimination laws, Ms. Straka did not insist that Mr. Urbanek must go or file a written complaint regarding her unpleasant encounters with Mr. Urbanek. The Corporation, for its part, maintains that it responded appropriately and has received no complaints since hiring Triple Track, in late 2016. In the light of recent events, despite the lack of any physical conduct, the Court accepts Ms. Straka's contentions that Urbanek's two comments and the cartoon image on his door were hurtful and demeaning.

In this matter, however, the question is whether the conduct of Mr. Urbanek, who is not a shareholder of the PC, and the alleged insufficient response of the Majority Shareholders constitutes minority shareholder oppression within the meaning of BCL§ 1104-A.

Neither Petitioner's allegations, nor the evidence justifies dissolution of a successful ongoing business, based on allegations of gender harassment. Nor is dissolution justified by Petitioner's allegation concerning the slower than anticipated conversion of tax and accounting software, the

purchase of Lacerte software, the unwillingness of Zucarelli or Lenda to guaranty corporate credit cards to be used by employees, or Petitioner's disappointment that the culture and technology of the combined firm disappointed her expectations.

The evidence establishes that all of the shareholders respected Ms. Straka's professional acumen and wanted her to remain as a shareholder in the PC. Under the Corporation's Matrix, Ms. Straka was projected to be the second highest earner among the four shareholders for 2016, the first full year of results and revenues for the venture. (Transcript February 9, 2018, p. 96). In 2015, distributions from the PC were essentially equal for the shareholders, each of whom reaped separate income in 2015 from revenues and billings generated by Brody Weiss or A&B. (Transcript January 16, 2018, pp. 125-127).

Ms. Straka considered leaving the PC as early as June 2015, citing Mr. Urbanek's boorish behavior among several factors that contributed to Ms. Straka's unhappiness, including staff complaints and friction, and the technological misfit between the two combining firms. Ms. Straka says she ultimately decided, in April 2016, after tax season to leave the firm and negotiated for her new position with the Tronconi firm between April and June. Ms. Straka, as an accountant must have known that her departure in August 2016, to work for a competitor would affect her financial status with the PC. With no shareholders' agreement, leaving to join a competing firm entailed risk, particularly with a ten year office lease in place, and the resultant reduction in the PC's revenue due to Ms. Straka's departure. That risk was certainly foreseeable to Ms. Straka, who tried to limit her exposure by stating, in writing, in her August 12, 2016 resignation letter (Trial Exhibit 10), that she resigned as a shareholder of the PC, as well as a director and officer. When Ms. Straka presented her resignation letter, she was represented by counsel, who had her proposed separation agreement submitted to the other shareholders in July 2016 before she left for to start work for Tronconi, Ms. Straka's departure unquestionably resulted in a departure of the Corporation's clients who moved with Ms. Straka to Tronconi.

In October 2016, Ms. Straka, then working as a principal of Tronconi, reaffirmed, in writing,

by signing a Confidentiality Agreement reiterating her intention to resign as a shareholder. The Court reasonably infers Ms. Straka sought to extricate herself from the PC's debt, including the PC's term bank loan with \$110,000 balance as of Ms. Straka's departure, and \$97,500 at year end 2016. (see Trial Exhibit 8, Trial Transcript, January 16, 2018, p.130) and ten year lease (Trial Exhibit B), by reaffirming her resignation as a shareholder. Ms. Straka acknowledged that her counsel insisted that the draft Confidentiality Agreement be modified to reflect her resignation as a shareholder. Ms. Straka never tendered her shares to the Corporation, though she sought payment from the Corporation, for her perceived interest in a professional corporation she abandoned for a competing firm.

Given the circumstances here, Ms. Straka's allegations regarding the inability of the parties to agree on the value of her interest in this professional corporation are inadmissible settlement discussions, pursuant to CPLR §4547, irrelevant to a determination of oppression, due to Ms. Straka's decision, in April 2016, to leave the PC. A professional corporation creates revenue and value through services rendered by its directors/shareholders. Ms. Straka's disappointment that the PC would not pay her cash to reward her abandonment of the firm cannot be oppression, particularly since Ms. Straka was paid the same monthly advance salary as all shareholder, up through her departure date, and the PC had advanced significant funds to A&B for Ms. Straka's monthly shares of payments Ms. Straka owed to A&B's founding partners, As confirmed in emails from Jon Zucarelli to Ms. Straka and David Arcara in December 2015 and January 2016 (Trial Exhibits I, J, K), because A& B capitalized the outstanding liability of Straka and Arcara to the A&B founding partners and amortized the goodwill, the PC advances for such buyout payments could not be deducted by the PC and were reflected as amounts due the PC from Straka and Arcara.

Ms. Straka cannot justify dissolution based on the 2017 promotion of Paul Eusano to director and shareholder, after her August 12, 2016 resignation. Ms. Straka admitted receiving a February 22, 2017 Notice of a March 7, 2017 Shareholders Meeting (Trial Exhibit 16) to elect directors and to act upon such other business as may properly come before the meeting or

adjournment. David Arcara testified, without contradiction that the Notice was sent to Ms. Straka on advice of corporate counsel, because Ms. Straka had refused to surrender her shares. Ms. Straka did not attend the meeting and cannot now allege oppression based on corporate action she chose not to challenge, six months after leaving the PC.

The Court denied Respondents' CPLR 3211 Pre- Answer Motion to Dismiss, for lack of standing based on Ms. Straka's alleged resignation as a shareholder, due to conflicting statements in Ms. Straka's August 12, 2016 resignation letter and the PC's 2016 corporate tax return (Trial Exhibit 1) listing Ms. Straka as a PC shareholder.

Respondents reasserted the standing defense in its Answer With Objections in Point of Law (Trial Exhibit 15). The Court determines that it is unnecessary to decide the standing issue, based on its determination that Petitioner has failed to prove oppression, within the meaning of BCL §1104-a, to sustain the petition for dissolution.

Respondents also asserted several affirmative defenses and counterclaims (Trial Exhibit 15, Verified Answer, ¶¶ 92-127), some of which are pertinent to the hearing on whether Petitioner has established shareholder oppression. First, Respondents contend that BCLaw §1104-a does not provide a resigning shareholder employee of a professional corporation the right to petition for dissolution once the shareholder departs from the professional corporation, particularly where the shareholder resigns to work for a competing professional firm. Dissolution petitions from competitors raise unfair competition concerns generally, in situations where a shareholder of professional corporation leaves, with clients, and then tries to disrupt the company from which the shareholder departed. Petitioner, in the absence of a Shareholders Agreement, has indicated that she seeks to have the PC or remaining shareholders redeem her shares. There is no authority for such relief in the context of the instant BCL §1104-a dissolution. Where a disappointed PC shareholder moves to take a similar position with a competing firm, courts must be cautious about the effect of dissolution on the women and men working for the ongoing professional firm left behind, and the obvious disruption that would ensue, in the instant case, for clients who rely on the PC for

professional tax and accounting services. Petitioner's approach here was backward. Without a shareholder's agreement, discussions with fellow shareholders before announcing a departure for a competing firm could have avoiding obvious conflicts of interest. If dissolution were granted in such circumstances, firms might well seize opportunities to dissolve competitors by virtue of the controls that ownerships creates.

Petitioner Diane Straka has not met her burden of proof on the issue of shareholder oppression. Accordingly, the Petition for dissolution, pursuant to BCL §1104-a, is hereby denied.

Dated: Buffalo, New York
March 15, 2018

Respectfully submitted,

ZDARSKY, SAWICKI & AGOSTINELLI LLP

s/Gerald T. Walsh

By: _____

Gerald T. Walsh, of counsel
Attorneys for Arcara Zucarelli Lenda & Associates
CPAs, P.C., David A. Arcara, Jon V. Zucarelli,
Donald J. Lenda and Paul Eusanio
1600 Main Place Tower
350 Main Street
Buffalo, New York 14202
Tel: (716) 855-3200

TO: **HURWITZ AND FINE, P.C.**
Attorneys for Petitioner Diane Straka
Andrea Schillaci, Esq., of counsel
1300 Liberty Building
Buffalo, New York 14202
(716) 849-8900