

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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MICHEL KADOSH, individually and as a
managing member of, 213 W. 85TH ST., LLC,

Index No.: 651834/2010

DECISION & ORDER

Plaintiff,

-against-

DAVID KADOSH, 114 W. 71ST ST., LLC, 30
LEXINGTON AVE., LLC, & 3D IMAGING
CENTER CORP.,

Defendants.

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DAVID KADOSH, individually and as a member
of 213 W. 85th ST., LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third-Party Defendant.

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IN THE MATTER OF THE APPLICATION OF
DAVID KADOSH,

Petitioner,

Index No. 650048/2013

-against-

FOR THE JUDICIAL DISSOLUTION OF
213 W. 85TH ST., LLC,

Respondent.

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SHIRLEY WERNER KORNREICH, J.:

I. Introduction

At their core, these actions involve the relationship of two brothers, Michel and David

Kadosh, who went into business together. After years of litigation and numerous attempts to resolve the matters, the actions were settled on July 21, 2016, in the midst of a 23-day bench trial that spanned a year. All of the claims, counterclaims, third-party claims, and all claims “whether stated or unstated” “from the beginning of the world to today’s date” were released and resolved between the brothers and their entities by agreeing to release a portion of millions of dollars held in escrow (by Robert L. Lewis, the court-appointed Temporary Receiver) to be divided equally between David and Michel Kadosh, and to hold the remainder of the escrow money awaiting a non-appealable, final decision of the Court. It was explicitly agreed, on the record, that the decision would not be a “reasoned one” – one containing findings of fact. Further, the parties agreed that David Kadosh would be permitted to put his testimony on the record and would not be cross-examined. David, Michel and David’s wife, Eryca Kadosh, who was a principal of some of his entities, were fully allocuted.

The next day, on July 22, 2016, in the midst of David’s testimony, an issue arose as to the amount in the escrow account.¹ In reaching the settlement, the parties had assumed that the amount was \$900,000 more than it was. To explain, the parties thought \$7.9 million was available in the escrow account for distribution through the settlement. In reality, \$7,034,442.02 was then available. The original settlement contemplated the release of \$7.2 million to be divided by the brothers and, after decision of the court, release of the remaining \$700,000. After further discussion, negotiation and contemplation over a nearly two-week period, on August 2, 2016, the parties modified the settlement to permit a distribution to both brothers of \$5.4 million (\$2.7 million to each) and the balance of \$1,634,442.02 (or whatever remained in escrow) to be

¹ Michael Kadosh raised the issue, and in keeping with the distrust the brothers felt toward each

distributed in accordance with the court's final determination. Michel and David Kadosh again were allocuted, and the trial continued.

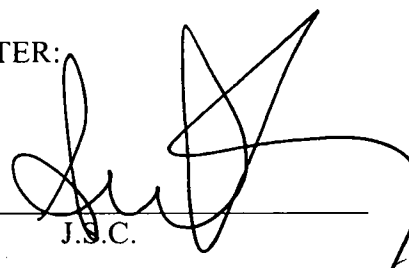
II. Final Decision

After reviewing the transcript, the relevant evidence, counsels' post-trial submissions, and the court's extensive notes, as well as making credibility determinations, the court awards \$1,634,442.02, or if a different amount remains in the escrow account held by Mr. Lewis, it awards the remainder of the escrow account, to Michel Kadosh. Accordingly, it is

ORDERED that the money remaining in the escrow account held by the Temporary Receiver in this matter, Robert L. Lewis, 7 Penn Plaza, suite 1602, New York, N.Y. (212-721-7353), is to be released and given to Michel Kadosh, a/k/a, Michel Kadoe to be paid in a manner specified by Michel Kadosh.

Dated: November 3, 2017

ENTER:



J.S.C.

SHIRLEY WERNER KORNEICH
J.S.C.

other which was manifest throughout these proceedings, felt that he had been duped by David.