

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

-----X
 HARVEY BARRISON,

Plaintiff,

VERIFIED COMPLAINT

Index No.:

-against-

D'AMATO AND LYNCH, LLP and LUKE D. LYNCH, JR.,

Defendants.
 -----X

Plaintiff, HARVEY BARRISON, by his attorneys, WINGATE, RUSSOTTI & SHAPIRO, LLP., as and for his Supplemental Verified Complaint against the defendants in the above entitled action, allege the following to be true upon information and belief:

**AS AND FOR A FIRST CAUSE OF ACTION
 FOR DISSOLUTION AND ACCOUNTING**

1. Plaintiff is an individual member of defendant D'AMATO AND LYNCH, LLP (hereinafter referred to as "D and L").

2. Defendant "D and L" is a law firm whose principal place of business is 2 World Financial Center, New York, NY 10281.

3. In 1990 plaintiff became a partner of defendant "D and L" law firm.

4. From 1990 until the present, plaintiff has continued as a partner

evidenced by the following:

4a. Plaintiff has always been provided by defendant "D and L" with an IRS K-1, "Partner's Share of Income, Deductions, Credits," and a New York State "Partners Schedule K-1", for the years 1990 until the present.

4b. Those K-1's identified plaintiff as a "general partner and/or domestic partner".

4c. The K-1's and accompanying documents identified plaintiff's capital account in "D and L".

4d. Defendant "D and L" charged back to plaintiff on the K-1's plaintiff's share of the New York City Unincorporated Business Tax allocable to partners.

- 4e. Defendant "D and L" did not deduct or pay Medicare tax from plaintiff's draw.
- 4f. Plaintiff paid Medicare tax attributable to his income on his own.
- 4g. Defendant "D and L" did not deduct or pay Social Security tax from plaintiff's draw.
- 4h. Plaintiff paid Social Security tax attributable to his income on his own.
- 4i. Defendant "D and L" did not withhold income taxes from plaintiff's draw.
- 4j. Plaintiff paid all income taxes attributable to his income on his own.
- 4k. Defendant "D and L" did not deduct from plaintiff's draw or pay New York State Worker's Compensation, unemployment insurance or disability insurance premiums for plaintiff.
- 4l. Defendant "D and L" provided plaintiff with a statement of his share of health insurance premiums paid by plaintiff which was reported as compensation to plaintiff.
- 4m. Plaintiff paid income taxes on that portion of added back health insurance premiums on his own.
- 4n. Defendant "D and L" had a 401(k) plan for its employees and matched a percentage of the employee's contribution to the 401(k) plan, but did not provide that benefit to plaintiff as a partner.
- 4o. Defendant "D and L" represented to the outside world that plaintiff was a partner in the firm.
- 4p. Plaintiff was at all times identified on defendant "D and L's" letterhead as a partner.
- 4q. Plaintiff was identified as a partner by "D and L" to its professional liability insurance carrier.
- 4r. Plaintiff was at all times listed as a partner by "D and L" on defendant "D and L's" law firm website.
- 4s. Plaintiff was authorized to and did bind the firm in obtaining legal business by executing retainers on behalf of the firm, thereby retaining clients the firm would represent.
- 4t. Plaintiff was provided with associates and secretarial staff by defendant "D and L" to manage as he saw fit.
- 4u. Plaintiff signed legal documents, pleadings and letters on behalf of the firm as partner of the firm, all with knowledge of the firm.

5. From on or about July, 2007, the firm was managed by defendant, LUKE D. LYNCH, JR. (hereinafter referred to as "LYNCH").

6. Since 2011, defendant "LYNCH", has attempted to coerce and force plaintiff into withdrawing from the firm by:

- 6a Refusing to assign new clients to plaintiff;
- 6b. Refusing to assign new matters to plaintiff;
- 6c. Changing plaintiff's method of compensation by requiring a minimum number of billable hours each month before plaintiff receives any draw;
- 6d. Refusing to pay plaintiff any draw for the last three (3) months.

7. As a result of these actions, plaintiff can no longer effectively operate within the partnership because of defendant "LYNCH's" conduct.

8. On June 6, 2011, plaintiff confronted defendant "LYNCH" with his conduct intended to cause plaintiff to disassociate from the firm.

9. Plaintiff requested that the defendant "LYNCH" and himself amicably resolve the plaintiff's disassociation from the firm.

10. Plaintiff and defendant "LYNCH" agreed that their respective counsel would further discuss the situation.

11. On or about June 7, 2011, plaintiff's counsel demanded an accounting from defendant's counsel on the basis of plaintiff's position as a partner in the firm.

12. Shortly thereafter, defendant's counsel denied that plaintiff was a partner or had any partnership interest in the firm, but rather was an employee and had always been an employee.

13. This was the first time that anyone from the firm told plaintiff he was an "employee" and not a partner.

14. There is no written partnership agreement executed by the partners of the firm thus, plaintiff's rights are determined exclusively by New York State Partnership Act.

15. Defendant "LYNCH" has continued to conduct the business of the partnership and on information and belief intends to continue without any compensation to plaintiff for his interest in the firm.

16. Defendant "LYNCH" and "D and L" have exclusive possession of all the assets of the partnership and all the partnership books and records.

17. Plaintiff has no manner of knowing or ascertaining the correct facts as to the money that has been earned by the partnership from June 1990 until the present, or money hereinafter earned or the assets and liabilities of the business except on information and belief that, from the period of 2000 to 2008, defendant "D and L's" revenue was in excess \$300,000,000.00 (THREE HUNDRED MILLION DOLLARS).

18. In the event that defendant "D and L's" business is not wound up, the disassociation of plaintiff from the partnership entitles plaintiff to a buyout of the plaintiff's partnership interest pursuant to Article 6 of the New York State Partnership Law.

19. Without an accounting, plaintiff is unable to determine exactly the value of his partnership interest in the partnership.

20. Plaintiff has no adequate remedy at law and demands dissolution and an accounting of the firm's profits and loss since 1990 and an accounting of its assets and liabilities.

WHEREFORE, plaintiff demands:

That said partnership be dissolved;

The partnership property and effects, including the good will be directed to be sold;

That an accounting be had of the affairs of said partnership from 1990 to the present;


That the proceeds of the partnership assets be divided after payment of all just debts of said partnership;

That a receiver be appointed to direct the dissolution of the partnership, the sale of its assets the collection of all monies in the division of the proceeds;

That the defendants be compelled to pay to plaintiff his proportionate share of said assets, including his capital account and good will and the value of his retirement and death benefits, together with interest thereon from said date;

And for such other and further relief as may be proper, together with costs and disbursements of this action.

Dated New York, New York
July 25, 2011


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

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HARVEY BARRISON,

Plaintiff,

VERIFICATION

-against-

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D'AMATO AND LYNCH, LLP and LUKE D. LYNCH, JR.,

Defendants.

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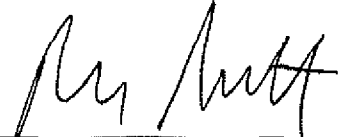
Philip Russotti, an attorney admitted to practice law in the Courts of this State, affirms the following under the penalties of perjury:

1. I am associated with the law firm of **WINGATE, RUSSOTTI & SHAPIRO, LLP**, attorneys for plaintiff herein. I make this verification pursuant to C.P.L.R. §3020(d)(3) in that plaintiff is not presently in the County wherein my office is located.

2. I have read the foregoing **SUMMONS** and **COMPLAINT** and know the contents thereof. The same is true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

3. My belief as to the matters not stated upon my own knowledge is grounded upon information supplied to me by the plaintiff and the information contained within the case file maintained by this office.

Dated: New York, New York
July 25, 2011



Philip Russotti

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SUPPLEMENTAL SUMMONS AND AMENDED VERIFIED COMPLAINT

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TO: