

AMERICAN ARBITRATION ASSOCIATION

-----X

TESS HALEY WACHS, INDIVIDUALLY, IN HER
CAPACITY AS SUCCESSOR TRUSTEE OF THE
ROBERT D. WACHS IRREVOCABLE TRUST OF 2013
AND TRUSTEE OF THE TESS HALEY WACHS TRUST,

Claimant,

Case No.:
01-16-0002-2675

-VS-

RICHARD TIENKEN,

Respondent,

-VS-

COMIC STRIP PROMOTIONS, INC.,

(Nominal Respondent).

-----X

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties or their predecessors, dated December 16, 2010, and having been duly sworn and having duly heard the proofs and allegations of the Parties, hereby AWARD as follows:

Hearings were held in this proceeding on November 15 and December 13, 2016. The hearings were closed on January 24, 2017.

Claimant, Tess Haley Wachs ("Wachs" or "Claimant") filed her Demand for Arbitration against Respondent Richard Tienken ("Tienken" or "Respondent") and Nominal Respondent Comic Strip Promotions, Inc. ("Comic Strip" or the "Corporation"), seeking compensatory and punitive damages and declaratory and injunctive relief alleging the following causes of action: (1) Breach of Fiduciary Duties; (2) Conversion; (3) Fraud; (4) Concealment; (5) Corporate Waste; (6) Mismanagement; (7) Unjust Enrichment; (8) Breach of Contract; (9) Declaratory Relief; and (10) Injunctive Relief.

Respondent did not file an Answer in the time allowed under the Commercial Arbitration Rules or as provided for in the initial Scheduling Order. Under Rule 5(a), Respondent has been deemed to deny the claims.

Over the course of the two days of hearings and through their post hearing submissions the parties offered testimony of six witnesses and introduced into evidence 83 exhibits (P1-76 and R80-86).

The evidence adduced at the hearings, through the testimony of numerous witnesses and the admission of numerous documents, presents an all too familiar situation arising out of a long-standing founder run business corporation upon the death of one of the founders. Exacerbating this situation is the underlying business has only general by-laws and a very narrowly drawn Shareholders Agreement focused on life insurance policies and succession rights, but providing no guidance on the operations of the business or general governance provisions. There has been no history of the Corporation maintaining financial statements beyond the annual tax returns. Given that the business has been operated until more recently with a significant cash component to both income and expenses without standard controls or records, it is very difficult for either party to establish with reasonable certainty that all revenues and expenses have been properly documented or accounted for. It is clear from the tax returns in evidence that revenues and expenses have been substantially and consistently underreported.

Having considered all of the evidence submitted and the arguments set forth in the parties respective closing briefs, following are my rulings:

1. Claimant has failed to establish by sufficient proof of all of the required elements of her first eight causes of action or her claim for punitive damages for many of the reasons set forth in Respondent's post-hearing Memorandum of Law and they are hereby dismissed.
2. Claimant also seeks the following declaratory and injunctive relief:
 - a. An Order declaring (1) Respondent Tienken's unilateral delegation of his duties as an officer to Mr. Latsch in 2014 was unauthorized and unapproved by a majority of the ownership, and in violation of the course of performance of the Shareholder Agreement; and (2) that Petitioner Wachs is a 50 percent shareholder pursuant to the valid December 16, 2010 Shareholder Agreement.
 - b. An Order restoring Comic Strip's status quo – prior to the unilateral and unapproved act of installing Mr. Latsch – whereby the Club is managed by its Directors/Shareholders. Such Order should enjoin the Club from delegating any management, financial, or any other duties to Mr. Latsch, until and unless there is agreement by both shareholders – pursuant to a duly noticed shareholder meeting as required under New York Law – as to his role, compensation, responsibilities, and duties.

- c. An Order removing Respondent Tienken as Chief Executive Officer, and installing Petitioner Wachs as Chief Executive Officer until, and unless there is an agreement by a majority of the shareholders as to an alternative CEO.
- d. An Order prohibiting Respondent Tienken from managing or accessing the Club's operations, finances, cash, moneys, or accounts with any financial institution (including any credit accounts), other than to transfer signing authority to Petitioner Wachs, given the wrongdoing alleged, and the threat of the wrongdoing continuing in the future.
- e. An Order that Respondent Tienken shall pay for Petitioner Wachs' fees and costs incurred in this proceeding, pursuant to N.Y. Bus. Corp. § 626(e).

In response to these requests for relief it is hereby Awarded as follows:

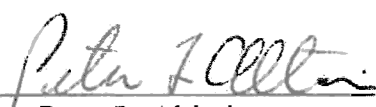
- a) The December 16, 2010 Shareholder Agreement ("Shareholder Agreement") is a valid Agreement and pursuant thereto, Claimant Wachs is a 50% shareholder and has been since her husband's death on December 2, 2013. The Shareholder Agreement is silent on delegation rights.
- b) Richard Tienken and Tess Wachs shall have equal votes in determining the management and operations of Comic Strip. There was insufficient evidence offered to justify the requested mandatory or prohibitive injunctive relief (b), (c) and (d) above.
- c) There shall be a duly noticed shareholder meeting as required under New York law within the next 30 days to determine the appointment of directors to the Corporation and at such meeting the Board of Directors shall elect officers of the Corporation and determine their duties, responsibilities and compensation, if any.
- d) The duly elected Officers of the Corporation shall be responsible for the management and operation of the Corporation including the hiring and firing of employees of the Corporation, for the maintenance of complete proper financial books and records of the Corporation, and to maintain the relationships and issue the authorizations required for all banking or other financial institution relations including checking account, credit line, credit card, borrowing or lending functions, life insurance and ATM access determinations.
- e) Unless the issues noted above in (c) and (d) can be agreed upon, that is directors elected, officers elected, and the responsibility for and the

procedures attendant to the management and operation of the Corporation determined and agreed upon by the two shareholders within the next 45 days, I find on the record before me that there currently exists sufficient evidence of such internal dissension between the two shareholders that dissolution of the Corporation would be beneficial to the shareholders pursuant the New York Corporation Law § 1104 and that my finding of such in this arbitration may serve as a basis for either 50% shareholder to petition the Court to confirm this Award and order such relief.

- f) Attorneys fees incurred in connection with these proceedings shall be borne respectively by each of the individual parties and not by the Corporation.
- g) The administrative fees and expenses of the AAA totaling \$13,000.00 are to be borne \$6,500.00 by Tess Haley Wachs and \$6,500.00 by Richard Tienken. The Compensation and expenses of Arbitrators totaling \$15,295.00 are to be borne \$7,647.50 by Tess Haley Wachs and \$7,647.50 by Richard Tienken. Therefore, Richard Tienken has to pay Tess Haley Wachs an amount of \$6,927.50.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are denied.


February 14, 2017



 Peter L. Altieri
 Arbitrator

I, Peter L. Altieri, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

February 14, 2017



 Peter L. Altieri
 Arbitrator