

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

<p>In the Matter of the Application of</p> <p>JOSEPH YAKUEL, AGENCY WITHIN LLC, and GET THINGS DONE LLC,</p> <p style="text-align: center;">Petitioners,</p> <p>For Judgment Confirming an Appraisal Award</p> <p style="text-align: center;">-against-</p> <p>ANDREW GLUCK,</p> <p style="text-align: center;">Respondent.</p>

Index No.:

**VERIFIED PETITION
TO CONFIRM
APPRAISAL AWARD**

Pursuant to Article 76 of the CPLR, Petitioners Joseph Yakuel, Agency Within LLC, and Get Things Done LLC, by and through their attorneys Robins Kaplan LLP, hereby petition this Court for confirmation of an appraisal award rendered in an appraisal proceeding with Respondent Andrew Gluck, and allege as follows:

NATURE OF THIS PROCEEDING

1. This special proceeding seeks an order confirming the appraisal award concluded by a neutral third-party appraiser, which arose out of an appraisal proceeding conducted in accordance with the terms of an agreement between the parties.

2. The parties' agreement provides Agency Within with the option to repurchase all of the company units owned by Andrew Gluck for an amount that equals their fair market value. The agreement states that Agency Within shall obtain an appraisal of the fair market value of such units by engaging a third-party appraisal firm, whose appraisal will be final and binding.

3. The appraisal procedure delineated in the parties' agreement affords Joseph Yakuel and Andrew Gluck the right to veto one firm from a list of potential third-party appraisal firms. The agreement provides that Agency Within will then engage a non-vetoed appraisal firm.

4. The appraisal procedure set forth in the Agreement was followed, including by the exchange of vetoes by both sides, the selection and engagement of a neutral third-party appraiser, and the final and binding determination of the fair market value of Mr. Gluck's company units set forth in the neutral third-party appraiser's written appraisal report dated March 20, 2019.

5. Despite vetoing one of the potential third-party appraisal firms and fully participating in the appraisal process (until this Court ruled he had no further right to participate), Mr. Gluck refuses to abide by the neutral third-party appraiser's final and binding determination. Without the Court's intervention to confirm the neutral third-party appraiser's final and binding determination, Mr. Gluck will persist in his refusal to recognize and abide by the appraisal's result.

THE PARTIES

6. Petitioner Agency Within is a New York limited liability company with its principal place of business in Queens, New York.

7. Petitioner Joseph Yakuel is the founder, CEO, and managing member of Agency Within. Mr. Yakuel is domiciled in the State of New York.

8. Petitioner Get Things Done is a member of Agency Within. Get Things Done is a New York limited liability company with its principal place of business in New York, New York.

9. Respondent Andrew Gluck was a member and COO of Agency Within. Upon information and belief, Andrew Gluck is domiciled in the State of New York.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the parties and subject matter because a substantial part of the events that gave rise to this matter occurred in the State of New York and Mr. Gluck is domiciled in the State of New York.

11. Venue is proper because a substantial part of the events that gave rise to this matter occurred here and the parties contractually agreed that venue shall lie in this Court.

THE FACTS

The Appraisal Process in the Parties' Amendment to Agency Within's LLC Agreement

12. Agency Within was formed pursuant to a Limited Liability Company Agreement dated February 20, 2015 ("LLC Agreement"). A true and correct copy of the LLC Agreement is annexed as Exhibit A. The Agreement designates Mr. Yakuel as the sole managing member and Andrew Gluck was a non-managing member.

13. Article IV of the LLC Agreement sets forth three classes of units representing interests in Agency Within. It provided Mr. Gluck a 35% interest in the company comprised of Class C units. Mr. Yakuel and Get Things Done own all Class A and Class B units constituting 65% of the company.

14. After several months of negotiations through counsel, the parties entered into the First Amendment to the LLC Agreement effective March 23, 2018 ("Amendment"). A true and correct copy of the Amendment is annexed as Exhibit B.

15. Section 3(a) of the Amendment provides Agency Within the option exercisable at any time and at its sole discretion to repurchase all of Mr. Gluck's units in the company ("Repurchase Option"). Section 3(a) provides that the aggregate purchase price of Mr. Gluck's repurchased company units shall be an amount equal to their fair market value.

16. Section 3(e) of the Amendment sets forth the process of determining the fair market value of Mr. Gluck's company units. It provides that Agency Within shall obtain an appraisal of Mr. Gluck's company units by "engaging a third-party appraisal firm, whose appraisal will be final and binding on all parties."

17. Section 3(e) of the Amendment affords Messrs. Yakuel and Gluck each the right to veto one potential third-party appraisal firm from a list of five enumerated firms. It then provides that Agency Within shall engage a non-vetoed neutral third-party appraisal firm.

18. Section 3(e) of the Amendment states that the neutral third-party appraisal firm will determine the fair market value of Mr. Gluck's company units and consider, among other things, "appropriate valuation discounts to account for the minority interest represented by the Units, the lack of marketability of such Units, and such other applicable valuation discounts." It also provides that Messrs. Yakuel and Gluck agree certain company expenses for fiscal years 2015, 2016, and 2017 will be added back for the purpose of the appraisal, and company expenses to be added back for any ensuing fiscal year shall be agreed upon by them, but if they cannot agree then such amount shall be finally determined by the neutral third-party appraisal firm.

19. Section 3(f) of the Amendment provides that "[i]mmediately upon exercising the Repurchase Option...the Company or the Member(s), as applicable, shall have the right to exclude Gluck from (i) participating in the affairs of the Company, including without limitation the business operations of the Company, and (ii) entering the business offices of the Company. Immediately upon such exercise, Gluck's sole right with respect to the Company and its business operations shall be to receive the Purchase Price for his Units."

20. Section 3(b) of the Amendment provides that the purchase price for Mr. Gluck's company units shall be payable with ten-percent at the closing and the balance by delivery of a promissory note that is due and payable in sixteen quarterly installments.

21. Section 3(c) of the Amendment provides that "[a]t the time of such Closing, Gluck shall have been deemed to have fully and irrevocably transferred all of the Units subject to the exercise of the Repurchase Option and the related rights with respect to the Company and the Agreement, as applicable concerning the repurchased Units."

The Repurchase Option is Exercised and the Parties Select PwC as the Appraiser

22. On or about May 11, 2018, Agency Within's assignee, Get Things Done, notified Mr. Gluck that it was exercising the Repurchase Option under Section 3 of the Amendment, it was exercising its right to veto one potential third-party appraisal firm from the list of enumerated firms, and that Agency Within would engage one of the remaining firms to conduct the appraisal.

23. On or about May 17, 2018, Mr. Gluck, through his counsel at Moritt Hock & Hamroff LLP, provided a letter acknowledging the exercise of the Repurchase Option and confirming Agency Within's veto of a potential third-party appraisal firm. The letter from his counsel also stated, "pursuant to Mr. Gluck's rights under Section 3(e) of the First Amendment, Mr. Gluck hereby elects to exercise his right to veto BDO USA from determining the Fair Market Value of his Units. Please confirm Mr. Gluck's veto of BDO USA." A true and correct copy of the letter from Mr. Gluck's counsel is annexed as Exhibit C.

24. As of the result of the parties' vetoes, PricewaterhouseCoopers (PwC) was selected as the neutral third-party appraisal firm to determine the fair market value Mr. Gluck's company units. Agency Within engaged PwC to conduct the appraisal.

Gluck Obstructs the Appraisal until this Court Rules He Has No Further Right to Participate

25. Weeks later, Agency Within unexpectedly received an email from Mr. Gluck's litigation attorneys demanding the company halt the appraisal. The email also stated that Mr. Gluck was consulting with a financial advisor to conduct his own analysis of the fair market value of his repurchased company units.

26. Agency Within declined to halt the appraisal, but offered to give Mr. Gluck copies of the information it would provide to PwC. Agency Within also stated it would allow Mr. Gluck to participate in the appraisal process in good faith, even though it had no obligation to do so under Section 3 of the Amendment.

27. On or about July 25, 2018, Mr. Gluck commenced an action in this Court and moved by order to show cause for a temporary restraining order and preliminary injunction to enjoin the appraisal and repurchase of his company units.

28. On or about July 30, 2018, and following argument, this Court denied Mr. Gluck's motion for a temporary restraining order. A true and correct copy of the hearing transcript is annexed as Exhibit D. As for Mr. Gluck's motion to enjoin the appraisal, this Court gave him two options: Mr. Gluck could proceed with his motion for a preliminary injunction, or Petitioners could allow him to participate in good faith in the appraisal process. Although Section 3 of the Amendment permits Mr. Gluck's exclusion from all company affairs, Petitioners chose the latter in good faith and in an effort to avoid any delay to the closing.

29. This Court so-Ordered the parties' stipulation to delay the briefing on Mr. Gluck's motion for a preliminary injunction, and endorsed Mr. Gluck's "agree[ment] to participate in the [a]ppraisal in good faith, without delay or obstruction." A true and correct copy of the so-Ordered stipulation is annexed as Exhibit E.

30. For the next few months, Mr. Gluck was an active (but obstructionist) participant. For example, Mr. Gluck took part in an introductory telephone conference with his own financial advisory firm and litigation counsel who attempted to direct PwC's appraisal process. They stated Mr. Gluck intended to submit his own documents and analyses, he may contest Agency Within's records, and claimed Agency Within may need to obtain audited financials.

31. In written communications, Mr. Gluck also provided his positions to PwC regarding, among other things, PwC's intention to use the IRS tax definition of "fair market value" to appraise his repurchased company units, the applicable date of the valuation, the suitability of including certain valuation discounts, and the potential exclusion of certain matters from the appraisal. A true and correct copy of Mr. Gluck's communication to PwC is annexed as Exhibit F.

32. Mr. Gluck's bad faith and litigious approach to the appraisal process eventually caused PwC to halt its work and threaten to quit. Indeed, this Court so-Ordered another of the parties' stipulations to delay the briefing on Mr. Gluck's motion for a preliminary injunction because the "[a]ppraisal process has stalled and the Parties are attempting to resolve the issues..."

33. Mr. Gluck's obstruction finally forced Agency Within to exercise its right under Section 3 of the Amendment to exclude him from the appraisal process. In response, Mr. Gluck renewed his motion for a preliminary injunction for this Court to enjoin the appraisal.

34. On or about November 7, 2018, this Court held a hearing on Mr. Gluck's motion for a preliminary injunction. A true and correct copy of the hearing transcript is annexed as Exhibit G. During the hearing, Mr. Gluck indicated he desired to participate in the appraisal while maintaining the right to challenge the final and binding determination of the fair market value of his repurchased company units, which caused this Court to reach the conclusion that Mr. Gluck "want[s] to have it all ways." Ex. G (Tr. at 23:13-14). This Court denied Mr. Gluck's motion to

enjoin the appraisal finding that under the circumstances, the “parties’ contract clearly provides ... the company shall have the right to exclude Gluck.” *Id.* (Tr. at 35:6-9).

PwC’s Appraisal Process

35. In the months that followed, PwC worked diligently to reach its final and binding determination of the fair market value of Mr. Gluck’s company units.

36. PwC requested (and Agency Within offered to provide) a substantial amount of information to further the appraisal. For example, Agency Within provided PwC with its financial statements, general ledgers from QuickBooks, tax returns, quarterly and annual balance sheets, quarterly and annual income statements, accounts payable/receivable aging reports, detailed spreadsheets concerning client invoices and revenues, extensive payroll and employee data, leases, financial projections, and many other items offered to and requested by PwC.

37. PwC engaged in numerous teleconferences and email communications with Agency Within concerning the appraisal. For example, PwC submitted several lengthy questionnaires to Agency Within, asking it to answer specific questions posed by PwC, provide supporting documentation, and explain calculations or documents provided by Agency Within. PwC also interviewed Mr. Yakuel on several occasions to learn more about Agency Within and to ask Mr. Yakuel questions about the company. In addition, Agency Within voluntarily disclosed additional material information to PwC as it became available to the company to aid PwC in completing its neutral appraisal.

38. On or about March 20, 2019, PwC issued its neutral third-party written appraisal report setting forth its final and binding determination of the fair market value of Mr. Gluck’s company units. A true and correct copy of the report is annexed as Exhibit H.

39. Pursuant to Section 3(e) of the Amendment, this determination of the neutral third-party appraiser is “final and binding on all parties.”

40. On or about May 4, 2019, the closing effecting the repurchase of Mr. Gluck's company units occurred. In accordance with the Amendment, Agency Within provided Mr. Gluck with a check for ten-percent of the purchase price and a promissory note for the balance.

Gluck's Efforts to Collaterally Attack the Neutral Third-Party Appraiser's Award

41. In a separate dispute between the parties, Mr. Gluck has purported to reserve all rights and remedies to challenge PwC's final and binding determination of the fair market value of his repurchased company units. Recently, Mr. Gluck has repeatedly indicated that he intends to contest PwC's determination, despite agreeing in Section 3(e) of the Amendment that the "appraisal will be final and binding on all parties."

CLAIM FOR RELIEF
An Order Confirming and Enforcing the Award

42. Petitioners repeat and reallege each allegation in the preceding paragraphs as if fully set forth herein.

43. The Amendment sets forth the manner in which the final and binding determination of the fair market value of Mr. Gluck's company units is reached by a neutral third-party appraiser.

44. The parties adhered to the appraisal process set forth in the Amendment for the expert determination of the fair market value of Mr. Gluck's company units.

45. In accordance with the Amendment, the neutral third-party appraiser rendered its expert decision of fair market value of Mr. Gluck's company units on March 20, 2019.

46. Therefore, the award of the neutral third-party appraiser should be confirmed, and judgment entered providing that Petitioner Agency Within LLC shall pay the purchase price determined by the neutral third-party appraiser to Respondent in the manner set forth in Section 3 of the Amendment, together with such other and further relief that the Court deems just, proper, and equitable.

REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court, pursuant to CPLR 7601, 7510, and 7514:

- A. Confirm the neutral third-party appraiser's expert award;
- B. Enter a final order and judgment providing that Petitioner Agency Within LLC shall pay the purchase price determined by the neutral third-party appraiser to Respondent in the manner set forth in Section 3 of the Amendment;
- C. Award Petitioners their attorneys' fees, costs, and disbursements; and
- D. Provide such other and further relief as the Court deems just, proper, and equitable.

Dated: August 21, 2019

ROBINS KAPLAN LLP

By: s/ Michael A. Kolcun

Craig Weiner
Michael A. Kolcun
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VERIFICATION

STATE OF NEW YORK)

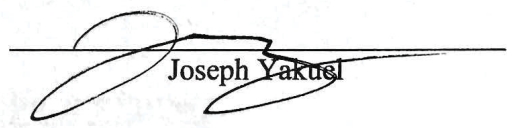
) ss.:

COUNTY OF NEW YORK)

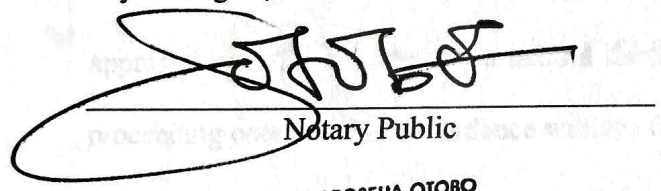
Joseph Yakuel, being duly sworn, deposes, and says:

I am a Petitioner in the above-referenced matter and an officer and authorized signatory for Petitioners Agency Within LLC and Get Things Done LLC. I have read the foregoing petition and know the contents thereof. The same are 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.

Dated: August 20, 2019
New York, New York


Joseph Yakuel

Sworn to before me this 20TH
day of August, 2019.


Notary Public

ATABU ENAROSEHA OTOBO
NOTARY PUBLIC-STATE OF NEW YORK
No. 010T6181893
Qualified in New York County
My Commission Expires February 11, 2020