

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

In the Matter of the Application of

DURST BUILDINGS CORPORATION, holder of 50%
membership interest in Artemus USA LLC,

Petitioner,

For the Dissolution of, and Appointment of a Receiver
or Trustee for ARTEMUS USA LLC,

-against-

EDELMAN FAMILY CO. LLC, managing member and
holder of 50% membership interest in Artemus USA
LLC,

Respondent.

X
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: Index No. 652036/2021
:
:
: **AMENDED VERIFIED**
: **PETITION FOR**
: **DISSOLUTION OF A**
: **LIMITED LIABILITY**
: **COMPANY PURSUANT TO**
: **CPLR ARTICLE 4**
:
:
: Petitioner designates New York
: County as the place of trial.
:
:
: The basis of venue, inter alia, is
: Plaintiff’s principal business
: address, the location of a
: substantial part of the events or
: omissions giving rise to the
: claims alleged herein and
: exclusive jurisdiction and
: venue by agreement.

Petitioner, by and through its attorneys, Rosenberg & Estis, P.C., as and for its amended
petition, alleges the following upon information and belief:

NATURE OF PROCEEDING

1. This is a special proceeding under Article 4 of the New York Civil Law and Practice
Rules, and pursuant to, *inter alia*, sections 18-801 through 18-805 of the Delaware Limited
Liability Company Act (the “LLC Law”) and applicable law, for an Order of Judgment (i)
dissolving Artemus USA LLC (the “Company”), (ii) appointing the Petitioner, which holds a 50%
membership interest in the Company, as the new managing member and liquidation agent
exclusively empowered and authorized to marshal, liquidate and distribute Company assets and
wind up its affairs, and (iii) compelling the Respondent, the current managing member and holder
of the other 50% of membership interest in the Company, to turnover to Petitioner all Company

assets and records and provide an accounting for the Company and its affairs during Respondent's tenure as managing member.

2. The Company, Artemus USA LLC, is a limited liability company organized under and governed by Delaware law with its principal place of business in New York County, subject to exclusive jurisdiction and venue of New York County courts pursuant to its LLC agreement, and with all members residing in New York County.

3. Petitioner, Durst Buildings Corporation (the "Petitioner") holds a 50% membership interest in the Company.

4. Respondent, Edelman Family Co. LLC (the "Respondent") is the holder of the other 50% of membership interest in the Company and has been its managing member since inception.¹

5. The petition dated March 25, 2021 that was originally filed commencing this proceeding is amended by this amended petition (the "Petition") based on recent events and evidence brought to the attention of the undersigned since filing the original petition.

6. There are multiple independent grounds for dissolution and the related relief sought herein pursuant to the Company's LLC agreement and sections 18-801 through 18-804 of the LLC Law.

7. Most significantly, since filing and service of the original Petition, Respondent has consented in writing to dissolving the Company and to appointing a receiver or the Petitioner as the member exclusively authorized to marshal, liquidate, distribute Company assets and wind up affairs. Respondent has also consented to an order for winding up the Company. In fact,

¹ While Respondent claimed to have resigned as managing member of the Company on or about May 13, 2021, there is no authority for such purported resignation under the Company's LLC agreement or otherwise absent a written instrument amending the LLC agreement under mutually agreed upon terms executed by both Petitioner and Respondent or absent the order of judgment sought in this amended petition. Petitioner asserts Respondent's purported resignation as managing member is currently invalid and ineffective.

Respondent has already claimed to have resigned as managing member and claimed to have begun the process of turning Company assets and control over to the Petitioner. But Respondent has yet to substantially comply and has been claiming to be in the process of dissolving and winding up the Company since Petitioner requested in September 2020.

8. Based on the history set forth in more detail below, Petitioner must obtain an order from the Court compelling Respondent to fully and timely comply with the relief sought herein and to prevent Company assets from being dissipated, lost or absconded in the interim.

9. By operation of the Company's LLC agreement, Petitioner is entitled to dissolution because Petitioner and Respondent remain dead-locked regarding a material decision about the Company. Although Respondent consented to the foregoing relief sought by Petitioner herein, Respondent has yet to substantially comply and requests that the Petition be withdrawn with no assurance that Respondent will fully or timely comply after the Petition is withdraw and without entry of order compelling the relief sought herein.

10. The Company's LLC agreement also provides for dissolution under the LLC Law, which, in turn, permits the court to dissolve the Company where, as here, dead-lock along with Respondent's mismanagement and misconduct have made it not reasonably practicable, if not impossible, to carry on the business in conformity with the Company's LLC agreement.

11. The LLC Law also provides for dissolution and wind up upon consent of the members, which is present here. As above, the issue is compelling Respondent to fully and timely comply with the relief to which Respondent consented.

12. When Petitioner first demanded in September 2020 that the Company be dissolved and assets liquidated, Respondent agreed and represented in writing that it was doing so.

13. Later, Petitioner, upon information and belief, became concerned that Respondent has been delaying liquidation and dissolution while continuing to wrongfully enrich the Respondent and its principal, Asher B. Edelman, at the expense of the Company and the Petitioner.

14. Accordingly, this action seeks to compel the agreed upon relief for liquidation and dissolution of the Company without further delay or risk of Company assets being dissipated, lost or absconded in the interim.

THE PARTIES

15. The Company, Artemus USA LLC is a limited liability company organized under the Delaware Limited Liability Company Act with a principal place of business located at 135 East 15th Street, New York, New York 10003 or 111 East 70th Street, New York, New York 10021, subject to exclusive jurisdiction and venue of New York County courts, and with all members residing in the County and State of New York. The Company, Artemus USA LLC, was formed for the purpose of purchasing, financing, leasing or lending artwork. A true and correct copy of the Second Amended and Restated Operating Agreement of Artemus USA LLC dated September 12, 2017 governing the Company (the “LLC Agreement”)² is attached hereto as **Exhibit A**.

16. Petitioner, Durst Buildings Corporation is a New York corporation with a principal place of business located at One Bryant Park, 49th Floor, New York, New York 10036, which holds a 50% membership interest in the Company and which is subject to exclusive jurisdiction and venue of New York County courts for any action arising out of matters related to the Company’s LLC Agreement.

17. Respondent, Edelman Family Co. LLC is a limited liability company organized under the Delaware Limited Liability Company Act with a principal place of business listed as

² Capitalized terms not otherwise defined herein have the same meaning ascribed to them in the LLC Agreement.

located at 135 East 15th Street, New York, New York 10003 or 111 East 70th Street, New York, New York 10021, with its sole member residing in the County and State of New York. Upon information and belief, Asher B. Edelman resides and is domiciled in the County and State of New York and is the managing member and sole member of Respondent, Edelman Family Co. LLC. Respondent, Edelman Family Co. LLC holds a 50% membership interest in the Company and has been serving as its Managing Member. Respondent, Edelman Family Co. LLC is subject to exclusive jurisdiction and venue of New York County courts for any action arising out of matters related to the Company's LLC Agreement.

JURISDICTION AND VENUE

18. Jurisdiction is proper under New York Civil Practice Law and Rules ("CPLR") 301 and 302(a).

19. Venue is proper in New York County pursuant to CPLR 503.

20. Pursuant to section 30 of the Company's LLC Agreement, the Company, Petitioner, and Respondent all consent to the exclusive jurisdiction and venue of any state or federal court sitting in the City of New York, Borough of Manhattan for any action arising out of matters related to the Company's LLC Agreement.

FACTS

The Company and Petitioner's Investment

21. Asher B. Edelman induced the Petitioner to invest in the Company for Mr. Edelman to lease or lend artwork to other companies for profit.

22. Mr. Edelman operated the Company, through his entity the Respondent as Managing Member of the Company, pursuant to a LLC agreement which was amended and restated by the Company's current LLC Agreement signed with Petitioner as of September 12, 2017. See Exhibit A.

23. Pursuant to the LLC Agreement, Petitioner and Respondent each contributed \$1,000,000.00 to the capital of the Company and each received 50% of the membership interest but Petitioner contributed an additional \$6,000,000.00 to the capital of the Company. See Exhibit A, § 7.

24. The LLC Agreement provides that the Company is governed by LLC Agreement and Delaware law but subject to the exclusive jurisdiction and venue of courts within New York County for any action arising out of matters related to the LLC Agreement. See Exhibit A, §§ 23, 30.

25. The Company was formed for the purpose of purchasing, financing, leasing or lending artwork with Respondent, as Managing Member, obligated to manage the Company's business using the premises and employees of the Respondent and other companies solely owned and controlled by Respondent's principal, Mr. Edelman (each a "Respondent Entity" and collectively, the "Respondent Entities") but in accordance with and subject to provisions of the LLC Agreement and the Business Plan referenced therein which must be approved by all Members each calendar year. See Exhibit A, §§ 5-6.

Unauthorized Company Loans, Expenditures and Encumbrance of Assets

26. Despite Petitioner's disproportionate capital contribution, to date, the Petitioner has received only a fraction of return of the capital invested from the Company while Respondent has continued to operate it in violation of provisions of the LLC Agreement and may have been enriching the Respondent Entities and their principal at the expense of the Company and Petitioner.

27. In May 2018, Petitioner learned that Respondent had violated the LLC Agreement by, among other things, causing the Company to pay compensation and expenditures that were not

provided under any Business Plan approved by Petitioner in violation of section 6(a)-(d) of the LLC Agreement. See Exhibit A, §6 (a)-(d).

28. By July 2020, Respondent had been operating the Company for years with Petitioner's multi-million dollar capital contribution, paying compensation to Respondent's principal and Respondent Entities' employees. At that time, Petitioner learned that in June 2020, Respondent had caused the Company to pledge its assets and incur a loan in the amount of \$500,000.00, see **Exhibit B**, without Petitioner's prior knowledge or consent in violation of section 5(c)(ii) of the LLC Agreement which requires the unanimous written approval of the Members before the Company can enter into any loan or financing agreement. See Exhibit A, § 5(c)(ii).

29. When Petitioner voiced objection to this unauthorized Company loan and encumbrance, Respondent claimed it was necessary for Company's operating expenses because the Company was "short on cash." Ironically, days later in August 2020, Petitioner learned that Respondent had just increased the salary of the Company's COO, Cedric Autet, see **Exhibit C**, who simultaneously serves as COO of ArtAssure Ltd., which is owned and controlled by Respondent's principal, Mr. Edelman. Attached hereto as **Exhibit D** is a true and correct printout from ArtAssure Ltd.'s website and LinkedIn profile reflecting Mr. Edelman as its founder and CEO. Attached hereto as **Exhibit E** is a true and correct printout from the LinkedIn profiles of Cedric Autet and Adelaide Roset reflecting that they simultaneously serve as officers of the Company and as officers of Respondent Entities, ArtAssure Ltd., and Edelman Arts, Inc.

30. Such compensation increases were grossly unwarranted if the Company was "short on cash" and in need of financing, as Respondent claimed. If Respondent did so without full disclosure to and prior written approval of Petitioner, that was yet another violation of the LLC Agreement. See Exhibit A, §6 (a)-(d).

31. Furthermore, upon information and belief, Respondent has and continues to wrongfully use the Company's assets to fund the payroll obligations of Respondent Entities, such as ArtAssure Ltd. and Edelman Arts, Inc., to officers and employees such as Cedric Autet and Adelaide Roset who are working primarily, if not solely, for the benefit of Respondent Entities and their principal.

Respondent Consents to Dissolution But Delays and Continues Misconduct

32. After these revelations of Respondent repeatedly violating the Company's LLC Agreement through unauthorized loans, encumbrances and expenditures, during the last week of September 2020 Petitioner requested and Respondent agreed to dissolve the Company and liquidate its assets. During the last week of November 2020, Respondent claimed it was making progress with respect to dissolving the Company and liquidating its assets.

33. However, by January 2021, more than three months after Respondent agreed to dissolve the Company and liquidate its assets, Petitioner received no statement of the Company's assets and liabilities for dissolution and observed what appeared to be Respondent continuing to operate the Company's business in the ordinary course with no indication that it was dissolving or liquidating assets.

34. Such constitutes multiple additional violations by Respondent of the Company's LLC Agreement which provides, under section 15(b), that upon dissolution, the Company's business must only be continued to the extent necessary to allow an orderly winding up of its affairs and the liquidation of its assets as promptly as practicable. See Exhibit A, §15(b). Section 15(b)(i) provides that Respondent, as Managing Member, is required to provide a statement setting forth the assets and liabilities of the Company as of the date of dissolution and section 11(a) provides that the Company's books of account are to be kept at the office of Petitioner so that it

cause annual financial statements to be prepared pursuant to section 11(b). See Exhibit A, §§ 15(b)(i) and 11(a)-(b).

35. In or about late January 2021, Petitioner also discovered that the Respondent Managing Member and its principal, Mr. Edelman, permitted one of their creditors to encumber their interest in Company assets. The Petitioner discovered that such creditor obtained a judgment against Mr. Edelman in the amount of over \$231,568.15 and later obtained an order charging payment of the outstanding judgment against Mr. Edelman's interests in the Managing Member's assets and against the Managing Member's interests in the Company's assets. See true and correct copies of the judgment and charging order attached hereto as **Exhibits F** and **G**.

36. The judgment and charging order were obtained years ago and remained outstanding and unsatisfied as of the date the original Petition was filed, giving Petitioner reason to believe that Respondent Managing Member was facing bankruptcy or dissolution and that Respondent may have rendered the Company insolvent. Petitioner was later informed that the said judgment was not satisfied until late April 2021.

37. Beginning on February 19, 2021, Petitioner served notice on Respondent:

- a. Providing forty-five (45) days' prior notice, pursuant to section 15(a)(i) of the LLC Agreement, that the Company should be dissolved due to a deadlock regarding a material decision, including, without limitation, material decisions regarding the Respondent Managing Member causing the Company to incur loans without the prior knowledge or consent of the Petitioner, as well as material decisions concerning Respondent Managing Member causing Company assets to be encumbered by creditors of the Respondent Managing Member and its principal;
- b. Asserting that the 45-day notice period for dissolution under section 15(a)(i) is not required because grounds exist for immediate dissolution under the LLC Law and under section 15(a)(ii) of the LLC Agreement due to Respondent Managing Member facing dissolution or bankruptcy;
- c. Demanding that the Company's business only be continued to the extent necessary to allow an orderly winding up of its affairs and the liquidation

of its assets as promptly as practicable in accordance with section 15(b) of the LLC Agreement;

- d. Demanding that, pursuant to section 15(b)(i) of the LLC Agreement, Respondent, as Managing Member, provide a statement setting forth all assets and liabilities of the Company as of the date of dissolution, as well as the latest financial statements and books of account for the Company in accordance with section 11(a);
- e. Repeating that Petitioner did not and will not consent to the Company incurring loans and encumbering assets, for which unanimous approval of all Members is required under section 5(c) of the LLC Agreement; and
- f. Demanding that Respondent Managing Member take action to immediately free the Company and its assets from any claims, liens or encumbrances of creditors of the Respondent and its principal. See notices attached hereto as **Exhibits H and I**.

38. On February 19 and 23 of 2021, Mr. Edelman, on behalf of Respondent Managing Member, responded to the demands for dissolution by re-confirming that Respondent agreed to do so and representing that Respondent has been liquidating Company assets ever since Petitioner requested in September 2020. See true and correct copies of email correspondence received from Respondent attached hereto as **Exhibit J**.

39. While Respondent provided some alleged financial disclosures, nearly five months after agreeing to dissolve and liquidate the Company, Respondent has yet to provide the complete statement of all assets and liabilities required for dissolution under section 15(b)(i) of the LLC Agreement or all the books of account required for financial statements under section 11(a)-(b).

40. Even more troubling, Respondent's February 23, 2021 correspondence revealed that Respondent caused the Company to incur more debt by entering into another unauthorized loan agreement without Petitioner's knowledge or consent in violation of section 5(c) of the LLC Agreement resulting in "an outstanding loan taken by Artemus in the amount of \$1,150,000." See Exhibit J.

41. Respondent also revealed that, “since December 2020”, it has been “in advanced discussion” to cause the Company to enter into another financing agreement without Petitioner knowledge or consent. This time with a German Bank, Internationales Bankhaus Bodensee AG, to finance the buyout of a sale-leaseback of one of the Company’s clients. In brazen defiance of the LLC Agreement, Respondent did not inform Petitioner of this third pending financing agreement until February 23, 2021 and does not even bother to request Petitioner’s written consent as required under section 5(c). See Exhibit J. While Respondent recently claimed that the Company is not the borrower or obligor under the foregoing financing agreement with Internationales Bankhaus Bodensee AG, Petitioner has yet to verify that.

42. Even more troubling, Petitioner recently learned that on January 27, 2021, a creditor of Respondent and its principal, Mr. Edelman, filed a federal action alleging, among other things, that Mr. Edelman rendered himself insolvent engaging in “a fraudulent scheme” to transfer assets out of creditors’ reach. See **Exhibit K**. This gave Petitioner even more reason to believe that Respondent has and will continue to wrongfully or fraudulently transfer Company assets, rather than appropriately liquidate them in accordance with the LLC Agreement.

Need for Dissolution, Liquidation and Appointment of Receiver or Petitioner as Liquidation Agent

43. To date, Petitioner has endured years of Respondent’s mismanagement, which may have rendered the Company insolvent or financially stressed with Petitioner receiving little of the capital it invested returned to date, and endured several months of Respondent’s delays and unauthorized loans, expenditures and encumbrances despite Respondent’s agreement to dissolve and liquidate the Company.

44. Dead-locking as well as Respondent's mismanagement and misconduct have made it not reasonably practicable, if not impossible, for the Company to carry on its business in conformity with the LLC Agreement that governs.

45. After filing the original Petition, Respondent has now consented to relief sought herein. In response to the original Petition, Mr. Edelman, on behalf of Respondent and the Company, stated, among other things: "We have been in the process of dissolving Artemus for many months. We have no objections to the appointment of a receiver or trustee and would think it would be more efficient if Cedric and I work with him during the process. An order for winding up, etc...is not at all a sticking point. We agree and have commenced the procedure and will continue to execute or assist during the process."

46. Mr. Edelman, on behalf of Respondent and the Company, also stated: "We are also prepared to turn the liquidation [of Artemus USA LLC] over to a Durst representative should the Durst organization so desire. Kindly indicate whatever course you prefer? We have no reason to litigate your requests." See a true and correct copy of an email from Mr. Edelman dated April 23, 2021 attached hereto as **Exhibit L**.

47. Absent an order compelling the relief sought herein, to which Respondent has consented, there is imminent danger that Respondent will continue delaying liquidation and dissolution and Company assets may be dissipated, lost or absconded in the interim

FIRST CAUSE OF ACTION

(Dissolution of Artemus USA LLC Upon Members' Consent, Pursuant to Delaware Limited Liability Company Act Section 18-801(a)(3))

48. Petitioner repeats and realleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

49. Pursuant to the Company's LLC Agreement, the Company was formed and is governed by the LLC Agreement, the LLC Law and other applicable law of the State of Delaware. See Exhibit A, Preamble and §§ 15(a)(iii), 23.

50. Pursuant to section 15(a)(iii) of the LLC Agreement, "[t]he Company shall be dissolved and its affairs shall be wound up[,] upon the entry of an order of judicial dissolution of the Company under Section 702[sic] of the LLC Law."

51. The LLC Law provides, in pertinent part, that:

(a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in a limited liability company agreement, but if no such time is set forth in the limited liability company agreement, then the limited liability company shall have a perpetual existence;

(2) Upon the happening of events specified in a limited liability company agreement;

(3) Unless otherwise provided in a limited liability company agreement, *upon the vote or consent of members who own more than $\frac{2}{3}$ of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members;*

(4) At any time there are no members [or]

(5) The entry of a decree of judicial dissolution under § 18-802 of this title.

LLC Law, § 18-801(a) (emphasis added).

52. Since September 2020, the Petitioner, which holds 50% of the Company's membership interest, requested dissolution of the Company and liquidation of its assets, and Respondent Managing Member, which holds the remaining 50% of the Company's membership interest, agreed and consented to such dissolution and liquidation.

53. This action seeks to compel the agreed upon dissolution and liquidation of the Company without further delay or any misconduct by the Respondent.

54. Accordingly, Petitioner is entitled to entry of an order of judicial dissolution of the Company, winding up its affairs and liquidating its assets pursuant to the LLC Law.

SECOND CAUSE OF ACTION

(Dissolution of Artemus USA LLC Pursuant to Delaware Limited Liability Company Act
Section 18-802)

55. Petitioner repeats and realleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

56. Pursuant to the Company's LLC Agreement, the Company was formed and is governed by the LLC Agreement, the LLC Law and other applicable law of the State of Delaware. See Exhibit A, Preamble and §§ 15(a)(iii), 23.

57. Pursuant to section 15(a)(iii) of the LLC Agreement, "[t]he Company shall be dissolved and its affairs shall be wound up[,] upon the entry of an order of judicial dissolution of the Company under Section 702[sic] of the LLC Law."

58. The LLC Law provides, in pertinent part, that:

On application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.

LLC Law, § 18-802.

59. As set forth above, dead-lock regarding material decisions as well as Respondent's mismanagement and misconduct, including, without limitation, unauthorized loans, expenditures and encumbrance of Company assets in repeated violation of the LLC Agreement, have all made it not reasonably practicable, if not impossible, for the Company to carry on its business in conformity with the LLC Agreement that governs.

60. There has been and still exists irreconcilable deadlock, dissention, hostility and distrust between the Company's Members over the most fundamental aspects of the Company in

that currently Respondent has agreed to the relief sought herein but has yet to substantially comply after months of delay regarding dissolution and liquidation.

61. The Company is unable to function or properly liquidate and dissolve under such divided and divisive management.

62. The Company faces the immediate danger of financial failure or insolvency.

63. It is not reasonably practicable to carry on the business of the Company or proceed with liquidation or dissolution in the current state.

64. Petitioner has made good faith attempts to resolve the impasse, to no avail.

65. At this time, with no other reasonable alternatives, a judicial dissolution and liquidation of the Company is in the best interests of the members and creditors.

66. Dissolution of the Company will not be injurious to the parties or the public.

67. Dissolution and liquidation in accordance with the provisions of the LLC Agreement and the LLC Law also will best ensure the payment of monies owed to the Company's creditors.

68. Accordingly, Petitioner is entitled to entry of an order of judicial dissolution of the Company, winding up its affairs and liquidating its assets pursuant to the LLC Law.

THIRD CAUSE OF ACTION

(Dissolution of Artemus USA LLC Pursuant to Section 15(a)(i) of the LLC Agreement)

69. Petitioner repeats and realleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

70. Pursuant to the Company's LLC Agreement, the Company was formed and is governed by the LLC Agreement, the LLC Law and other applicable law of the State of Delaware. See Exhibit A, Preamble and §§ 15(a)(iii), 23.

71. Pursuant to section 15(a)(i) of the LLC Agreement, “[t]he Company shall be dissolved and its affairs shall be wound up[,] upon at least forty-five (45) days’ prior notice to all the Members from a Member that the Company should be dissolved due to a dead-lock regarding a material decision ...”

72. As set forth above, no later than February 19, 2021, Petitioner served notice upon Respondent Managing Member that, pursuant to section 15(a)(i) of the LLC Agreement, the Company is to be dissolved due to a dead-lock regarding material decisions.

73. Accordingly, Petitioner is entitled to entry of an order of judicial dissolution of the Company, winding up its affairs and liquidating its assets pursuant to the LLC Agreement.

FOURTH CAUSE OF ACTION

(Appointment of a Receiver or Petitioner as Liquidation Agent for Artemus USA LLC)

74. Petitioner repeats and realleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

75. Pursuant to the Company’s LLC Agreement, the Company was formed and is governed by the LLC Agreement, the LLC Law and other applicable law of the State of Delaware. See Exhibit A, Preamble and §§ 15(a)(iii), 23.

76. Delaware law recognizes a court’s exercise of equitable power to appoint a receiver or trustee.

77. By reason of the foregoing distrust and dissention that exists between the Company’s Members, there is an urgent need for the prompt appointment of a receiver or preferably Petitioner as exclusive liquidation agent to wind up the Company’s affairs, as consented to by the Respondent.

78. Absent an order compelling dissolution, liquidation and appointing a receiver or preferably Petitioner as exclusive liquidation agent to do so, there is imminent danger that Respondent will render the Company insolvent and continue delaying liquidation and dissolution.

SIXTH CAUSE OF ACTION
(For Accounting and Financial Disclosures)

79. Petitioner repeats and realleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

80. By reason of the foregoing, Petitioner seeks an accounting and financial disclosures required under Sections 11 and 15 of the LLC Agreement to ascertain and recover any funds, assets and property that may have been intentionally, maliciously, willfully wantonly and/or negligently converted, misappropriated, wasted, squandered, diverted and/or otherwise alienated from the Company and in contravention of Petitioner's rights.

81. Petitioner's has no adequate remedy at law.

82. By reason of the foregoing, Respondent should be required to account for the Company's affairs and assets.

WHEREFORE, Petitioner requests an order and judgment as follows:

- a. On the First, Second, Third and Fourth Causes of Action, a judgment and order compelling dissolution of Artemus USA LLC and liquidation of its assets consistent with the LLC Agreement;
- b. On the Fifth Cause of Action, an order directing appointment of a receiver or preferably Petitioner as liquidation agent to dissolve Artemus USA LLC and liquidate its assets consistent with the LLC Agreement and with reasonable and necessary fees and expenses of dissolution and liquidation to be paid from assets of Artemus USA LLC;
- c. On the Sixth Cause of Action, an order directing Respondent to provide an accounting of all assets and liabilities of Artemus USA LLC; and
- d. Granting Petitioner its costs and disbursements in connection with this action, together with such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
May 24, 2021

ROSENBERG & ESTIS, P.C.
Attorneys for Petitioner

By: 

John D. Giampolo
733 Third Avenue
New York, New York 10017
(212) 551-1273

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

David Neil, being duly sworn deposes and says:

1. I am an Authorized Signatory of Durst Buildings Corporation (“Petitioner”), the Petitioner in the within action.

2. I have read the foregoing amended petition and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The source of my information and belief is the records of Petitioner.

DocuSigned by:
David Neil
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Sworn to before me this
24 day of May, 2021

Carmen Zayas Rodriguez
NOTARY PUBLIC

CARMEN ZAYAS RODRIGUEZ
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01ZA6414498
Qualified in Orange County
My Commission Expires 2/27/2025