

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

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In the Matter of the Petition of

Index No. 160294/2021

ALVIN CLAYTON FERNANDES

AFFIDAVIT IN OPPOSITION

For the Judicial Dissolution of

MATRIX MODEL STAFFING, INC.

Motion #003

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State of New York)
) ss.:
County of Westchester)

ALVIN CLAYTON FERNANDES, being duly sworn, deposes and
says:

1. I am the Petitioner in the above-entitled proceeding
and, as such, I am fully familiar with the facts and circumstances
set forth herein.

2. I make this affidavit in opposition to Respondent
Matrix Model Staffing, Inc.'s ("Matrix") motion to dismiss the
Amended Verified Petition (NYSCEF Doc #14).

3. By way of background, and as more fully set forth
in the Amended Petition, I am a Trinidad-born "model", artist and
restauranteur. The word "model" is highlighted because that is
the business purpose of the business entity at issue herein, Matrix
Model Staffing, Inc., which was formed to provide models and other
individuals to clients such as Tiffany's or other high-end
retailers to act as Door Greeters when welcoming in customers to

their physical stores. Matrix also provides models, etc. to caterers for events and similar occasions.

4. By quick way of background, I was one of the most recognizable Black models in the world in the mid-eighties and early nineties and I was regularly featured in GQ and Vogue magazines. For a while I worked full time for Ford Models, meaning both exclusively for Ford and "full time" in that I was as busy and "booked" as one can be.

5. I relate this not for purposes of ego but to demonstrate that I was driving force behind Matrix, its public face and really the calling card, or the reason we were able to (a) attract models to work for Matrix and then (b) to sell our services to the clients.

6. In 2006, Mark Keyes and I formed Matrix Model Management, Inc. ("Matrix Management"). We were 50/50 owners.

7. We hired our only employee, Jacquelyn Willard ("Willard"), to handle the day-to-day operations of Matrix Management. Ms. Willard at that point had no ownership or equity interest therein.

8. In 2012, Mark left Matrix Management. In order to reward Ms. Willard, I granted her forty-nine (49%) of the shares and I retained fifty-one percent (51%). Willard continued to run the day-to-day operations of Matrix Management, while I was the public face of the entity and was the "drawing card."

9. In 2015, Willard and I agreed to form Respondent, Matrix Model Staffing, Inc.¹ The company was formed on the strength of my reputation, name recognition and experience as an established supermodel in the fashion industry. Willard had 80% of the voting shares and I had and still have as of today, 20% of the voting shares.

10. It was my reasonable expectation that although Willard would handle Matrix Staffing's day-to-day operations, that based on my experience, I would have direct input into and a say in the major decision-making process and financial dealings of Matrix Staffing. That had been the way we had operated since 2012.

11. It was always understood that Willard would call me with concerns about the company and I would give her counsel and advice. It was always further understood that Willard would reach out to me via telephone because I was not one to check my emails on a regular basis. Willard was and is very aware of this and knows email is not my preferred method of communication.

12. In or around 2018, Willard asked me to be more involved in the day-to-day running of the company. I attended

Willard and I knew that she was the behind the scenes day-to-day operator and I was the face or relationship manager of the company,

16. Returning to 2018, based on my contributions while the Company was growing, it appeared to me that Willard was struggling with her end of the operations. I then put Willard in touch with two capable potential operators, Claire Painchaud and Jasmine Cadet. After vetting these people, I thought that they would be a good fit to run the day-to-day operations and assist Willard.

17. Willard had meetings with both these individuals and did not hire either. Willard continued to hire the people that she thought would be right for the company and they were compensated as such.

18. Countless times when Willard reached out to me, by phone, I gave her my advice on various issues and how I thought the company should be run. Willard stopped following my advice and at each juncture did what she wanted.

19. In 2019, Willard reached out to me for help with paying staff salaries. I asked Willard why Matrix was having difficulties paying the staff when we had so many jobs that were completed.

20. Willard told me that many of the companies were taking a very long time to pay. At that time, I instructed Willard to inform all of our employees and staff that we would not be paying them until we were paid by the clients since at that time most of the employees were working for us as models per their

contracts with Matrix. Essentially I advised her that we would go on a "pay when paid" system, which is an accepted standard in the modeling industry.

21. I told Willard that as a model at Ford, a company with much more resources and larger cash flow than our smaller enterprise, I, as well the other models, were only paid when the clients paid the modeling agency. That is the accepted industry standard.

22. Willard said that that we would lose staff but she was completely wrong because as in modeling, when given the option of working and being paid when the agency/employer collects or not working at all -- working always wins out. As I am sure the Court is aware, most of the models making up our staff are younger and trying become established, so the option of work is very appealing. One only has to think of all of the young actors waiting tables until their careers take off.

23. I informed Willard that this was the industry standard, that most companies were doing the same thing and this is what we had to do.

24. In complete disregard of my counseling and advice, Willard sought financing from outside lenders, unbeknownst to me. This proved to be very costly and a huge mistake.

25. Despite the duties Willard owed to me, it was not until Willard had problems paying back these loans that she had

secured in order to pay staff that I learned about the existence of the loans, and the untenable obligations she created for the company.

26. The rates and terms of these loans that she was unnecessarily securing were unfavorable to say the least. I believe they carried high interest rates and there were also upfront fees to secure the loans.

27. Importantly, I had a reasonable expectation at inception that Willard would heed my advice and input when it came to how and when to pay the staff and finance the company.

28. In addition, I had a reasonable expectation that Willard would pay all of Matrix's tax obligations from cash flow **and that she would not unilaterally and without my knowledge and consent expose me to personal liability for Matrix's debts.**

29. As more fully set forth in the Amended Petition, Willard unilaterally and without my knowledge or consent, designated me to the IRS as being responsible for the employment taxes. Further, there is no indication that Willard likewise obligated herself to the IRS.

30. Unbeknownst to me, Matrix Staffing and Willard failed to pay Matrix's payroll taxes in 2019.

31. In or around August 2021, I received four (4) notices from the Internal Revenue Service advising me that I was being personally charged the Trust Fund Recovery Penalty (TRFP) for

willfully failing to collect, account for, pay over, or otherwise evade employment. Copies of the aforesaid notices are annexed to the Amended Petition as Exhibit "B" (NYSCEF Doc #12).

32. The total amount of the penalties is \$210,961.22, which amount remains due and owing, together with additional interest charges and I am personally liable same.

33. At no time since Matrix's inception was I ever responsible for collecting, truthfully accounting for, or paying over employment taxes, nor did I ever do so. This was the sole responsibility of Willard.

34. Finally, I had a reasonable expectation that I would receive truthful and accurate K-1's from Matrix.

35. My Matrix K-1 for 2017 states a profit of \$15,230.00 and a distribution to me of \$29,685.00. A copy of said K-1 is annexed hereto and made a part hereof as Exhibit "A".

36. My Matrix K-1 for 2018 states a profit of \$9,501.00 and a distribution to me of \$16,497.00. A copy of said K-1 is annexed hereto and made a part hereof as Exhibit "B".

37. My Matrix K-1 for 2019 states a loss of \$13,079 and a distribution to me of \$18,597.00.00. A copy of said K-1 is annexed hereto and made a part hereof as Exhibit "C".

38. In total, the aforesaid K-1's state a total profit of \$11,652.00 and total distributions to me of \$64,779.00.

39. I have never received any of said profit or distributions, but yet I have had to incur significant tax liabilities thereon.

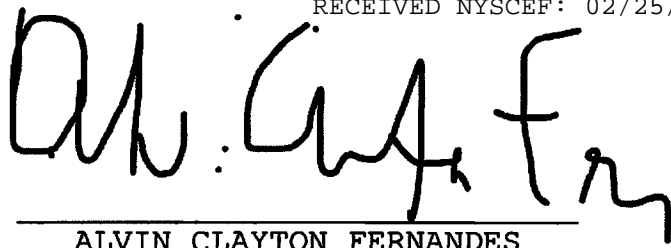
40. As of the date hereof, I have not received K-1's for 2020 or 2021.

41. Again, at the time I entered into the venture, I did not reasonably expect to incur tax liabilities for money I have never seen.

42. I also believe that Willard siphoned off money from Matrix to pay her personal obligations, such as her own rent and living expenses. To hide this Willard hired her boy friend, Steven (last name unknown), who lived with her at the Matrix paid for apartment, to do the books and records of the company. Again, at the time I entered into the venture, I had a reasonable expectation that Willard would not defraud the company, siphon off money and would hire a third party at arm's length to keep the books and records.

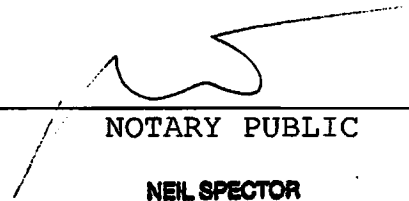
43. It is submitted that Willard's actions as set forth above constitutes oppressive conduct that has defeated my reasonable expectations warranting a denial of the motion and dissolution of the corporation.

WHEREFORE, it is respectfully requested that the Court deny the instant motion to dismiss in its entirety, together with such other and further relief as this Court deems just and proper.



ALVIN CLAYTON FERNANDES

Sworn to before me this
25th day of February, 2022.



NOTARY PUBLIC

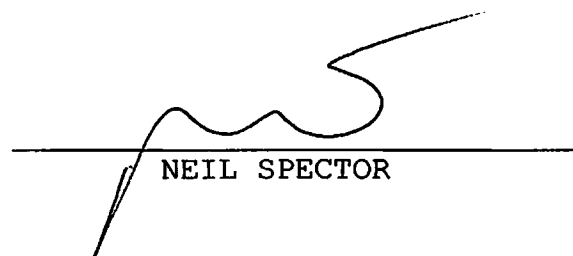
NEIL SPECTOR
Notary Public, State of New York
No. 02SP6353540
Qualified in Sullivan County
Commission Expires 01/30/2025

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CERTIFICATION OF WORD COUNT PURSUANT TO 22 NYCRR 202.8-b

Neil Spector, undersigned counsel for Petitioner Alvin Clayton Fernandes, hereby certifies that the number of words in the within Affirmation, excluding the caption and signature block is 1994 according to the word-processing system used to prepare the aforesaid document.

Dated: White Plains, NY
February 25, 2022



NEIL SPECTOR