

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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ELAINE HOFFMAN,

Petitioner,

-against-

CORNELL BEVERAGES, INC., ALLAN HOFFMAN,  
DONNA HOFFMAN and JUDI BREZNIAK,

Respondents.  
-----X

Index No.:  
Date Filed:

VOLUNTARY PETITION  
FOR DISSOLUTION

Petitioner, ELAINE HOFFMAN, through her attorneys, RICHARD A. KRASLOW, P.C. and ALAN G. KRAUT, ESQ., complaining of the Respondents, CORNELL BEVERAGES, INC., ALLAN HOFFMAN, DONNA HOFFMAN and JUDI BREZNIAK, sets forth and alleges, upon information and belief, as follows:

1. That this is a Petition for judicial dissolution pursuant to NY BCL §1104-a, and for an accounting, and is within the jurisdiction of this Court.
2. That at all times material hereto, Petitioner, ELAINE HOFFMAN, was and still is an individual residing in the County of Queens, State of New York, over the age of 18 years and *sui juris*.
3. That Respondent, CORNELL BEVERAGES, INC., is a domestic corporation organized and existing pursuant to the laws of the State of New York, with its principal place of business at 105 Harrison Place, Brooklyn, New York 11237-1403 [*hereinafter the "Corporation"*].
4. That at all times material hereto, Petitioner, ELAINE HOFFMAN, is the holder of twenty-five (25%) percent of the outstanding shares of Respondent, CORNELL BEVERAGES, INC., entitled to vote in an election of directors.

5. That at all times material hereto, Respondent, ALLAN HOFFMAN, was and still is an individual residing in the County of Queens, State of New York, over the age of 18 years and *sui juris*.

6. That at all times material hereto, Respondent, ALLAN HOFFMAN, is holder of twenty-five (25%) percent of the outstanding shares of Respondent, CORNELL BEVERAGES, INC., entitled to vote in an election of directors.

7. That at all times material hereto, Respondent, DONNA HOFFMAN, was and still is an individual residing in the County of Nassau, State of New York, over the age of 18 years and *sui juris*.

8. That at all times material hereto, Respondent, DONNA HOFFMAN, is holder of twenty-five (25%) percent of the outstanding shares of Respondent, CORNELL BEVERAGES, INC., entitled to vote in an election of directors.

9. That at all times material hereto, Respondent, JUDI BREZNIAK, was and still is an individual residing in the Country of Israel, over the age of 18 years and *sui juris*.

10. That at all times material hereto, Respondent, JUDI BREZNIAK, is holder of twenty-five (25%) percent of the outstanding shares of Respondent, CORNELL BEVERAGES, INC., entitled to vote in an election of directors.

11. That at all times material hereto, Petitioner, ELAINE HOFFMAN, and Respondents, ALLAN HOFFMAN, DONNA HOFFMAN and JUDI BREZNIAK, constitute all of the shareholders of Respondent, CORNELL BEVERAGES, INC.

12. That venue is proper in the County of Kings, State of New York.

13. That all conditions to the bringing of this Petition, if any, have occurred and/or

have been waived.

14. That the Corporation commenced doing business effective March 30, 1950.

15. That the Corporation is engaged in the manufacture, bottling and distribution of soft drink beverages.

16. That the Corporation is not registered as an investment company under the Federal Investment Company Act of 1940, as amended; no shares thereof are listed on a national securities exchange or regularly quoted on an over-the-counter market.

17. That Petitioner, ELAINE HOFFMAN, demands, pursuant to NY BCL §1104-a, that the Corporation be dissolved on the grounds that:

“The directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders.” [NY BCL §1104-a(1)]

18. That Petitioner, ELAINE HOFFMAN, demands, pursuant to NY BCL §1104-a, that the Corporation be dissolved on the additional grounds that:

“The property or assets of the corporation are being looted, wasted or diverted for non-corporate purposes by its directors, officers or those in control of the corporation.” [NY BCL §1104-a(2)]

19. That the Petitioner, ELAINE HOFFMAN, and Respondents, ALLAN HOFFMAN, DONNA HOFFMAN and JUDI BREZNIAK, derived their interests in the Corporation from the original shareholders of the Corporation, namely, Samuel Hoffman [*grandfather of Petitioner, ELAINE HOFFMAN, and Respondents, ALLAN HOFFMAN, DONNA HOFFMAN and JUDI BREZNIAK*], Hyman Hoffman [*father of Petitioner ELAINE HOFFMAN, and Respondent, ALLAN HOFFMAN*] and Melvin Hoffman [*father of Respondents, DONNA HOFFMAN and JUDI BREZNIAK*], and are bound by the terms and/or conditions of that certain Shareholders Agreement dated as of March 27, 1967.

20. That it was, at all times relevant hereto, the intention of the original shareholders that the Corporation be operated as a "*family business*", and that upon their deaths, Petitioner, ELAINE HOFFMAN, and Respondents, ALLAN HOFFMAN, DONNA HOFFMAN and JUDI BREZNIAK, each be involved in the management, administration and control of the Corporation.

21. That Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, Officers and/or Directors of the Corporation, have, unilaterally, and without the consent of Petitioner, ELAINE HOFFMAN, assumed the management, administration and control of the Corporation.

22. That, upon information and belief, Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, Officers and/or Directors of the Corporation, have, without the knowledge and/or consent of Petitioner, ELAINE HOFFMAN: (i) caused the Corporation to pay to Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, shareholder's compensation which is excessive and unfair to Petitioner, ELAINE HOFFMAN, and/or the Corporation; (ii) caused the Corporation to pay to Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, compensation amounting to a de facto dividend to the exclusion of the Petitioner, ELAINE HOFFMAN; (iii) denied Petitioner, ELAINE HOFFMAN, participation in the management, administration and control of the Corporation and/or a voice in the decision-making processes; (iv) failed to provide Petitioner, ELAINE HOFFMAN, documents necessary to properly evaluate her interests in the Corporation; (v) used corporate funds for their personal expenses and/or those of related parties; (vi) failed to provide financial statements or other information that Petitioner, ELAINE HOFFMAN, has a right to receive;

(vii) engaged in acts designed to freeze Petitioner, ELAINE HOFFMAN, out of the Corporation and/or to deny Petitioner, ELAINE HOFFMAN, her fair share of the Corporation's value; (viii) looted, wasted and/or diverted corporate assets for non-corporate purposes; and (ix) breached and/or otherwise failed to comply with the express terms and/or conditions of that certain Shareholders Agreement dated as of March 27, 1967.

23. That Petitioner, ELAINE HOFFMAN, has been denied access to and an examination of the books and/or records of the Corporation, has been completely frozen out of the management, administration and/or control of the Corporation despite her substantial equity therein and her lifelong devotion to the business of the Corporation.

24. That Petitioner, ELAINE HOFFMAN, has been irreparably harmed and damaged by the hostility directed toward her by Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, Officers and/or Directors of the Corporation.

25. That Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, Officers and Directors of the Corporation, have sacrificed the welfare of the Corporation and its Shareholders for their own personal gain and self-aggrandizement.

26. That it was a reasonable expectation of Petitioner, ELAINE HOFFMAN, and her father, Hyman Hoffman, that Petitioner, ELAINE HOFFMAN, would be employed by the Corporation, have a voice in the management, administration and control of the business of the Corporation, derive a substantial salary from the management, administration and/or operation(s) of the business of the Corporation, and to receive dividends on her capital stock.

27. That the action of the Corporation, by and through its Officers and/or Directors, Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, toward the

Petitioner, ELAINE HOFFMAN, constitutes a freeze-out from the management, administration and/or operation(s) of the business and that the Corporation, by and through its Officers and/or Directors, Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, have been and are guilty of fraudulent and/or oppressive actions towards Petitioner, ELAINE HOFFMAN.

28. That the liquidation of the Corporation is the only practicable and/or achievable means whereby Petitioner, ELAINE HOFFMAN, may reasonably and/or practically expect to obtain a fair return on her interest in the Corporation.

29. That liquidation is reasonably and/or practically necessary for the protection of the rights and/or interests of Petitioner, ELAINE HOFFMAN.

30. That judicial dissolution is, accordingly, necessary, warranted and required pursuant to NY BCL §1104-a.

31. That, in the interim, the immediate appointment of a receiver, pursuant to NY BCL §1113, is essential and mandated in order to prevent the further fraudulent, oppressive and/or wrongful conduct of the Corporation by and through its Officers and/or Directors, Respondents, ALLAN HOFFMAN and DONNA HOFFMAN.

32. That as a result of the wrongful acts and/or practices of the Corporation made by and/or through its Officers and/or Directors, Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, Petitioner, ELAINE HOFFMAN, has been damaged in an amount to be determined at the trial of this action, which amount may only be ascertained by a formal accounting of the earned income and/or other income and/or expenses relating to the maintenance, administration and/or operation of the business of the Corporation.

33. That no previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, Petitioner, ELAINE HOFFMAN, demands judgment against Respondents, CORNELL BEVERAGES, INC., ALLAN HOFFMAN, DONNA HOFFMAN and JUDI BREZNIAK, as follows:

A. (i) pursuant to N.Y. Gen. Bus. Law §1104-a, for a final order dissolving Respondent, CORNELL BEVERAGES, INC., and (ii) pursuant to N.Y. Gen. Bus. Law §1113, for the appointment of a receiver to sell the assets of Respondent, CORNELL BEVERAGES, INC.;

B. For an accounting directing that Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, be ordered and decreed to account for all monies received by them, and relating to the maintenance and/or operation of Respondent, CORNELL BEVERAGES, INC., and that Respondents, ALLAN HOFFMAN and DONNA HOFFMAN, be directed to pay to Petitioner, ELAINE HOFFMAN, and/or Respondent, CORNELL BEVERAGES, INC., the amount found due and owing to her/it by such accounting, together with an award of interest thereon, court costs and attorneys' fees; and

C. Such other and further relief as the Court may deem just and proper.

  
ELAINE HOFFMAN

Sworn to before me this  
1<sup>st</sup> day of December, 2015

  
Notary Public

RICHARD A. KRASLOW  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 4857518  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES MARCH 31, 2017

STATE OF NEW YORK            )  
  ss:  
COUNTY OF SUFFOLK         )

**CLIENT VERIFICATION**

ELAINE HOFFMAN, being duly sworn deposes and says:

I am the Petitioner named in the within action.

I have read the annexed Voluntary Petition for Dissolution and know the contents thereof and the same are true to my knowledge, except those matters herein which are stated to be alleged upon information and belief, and to those matters, I believe them to be true.

  
\_\_\_\_\_  
ELAINE HOFFMAN

Sworn to before me this  
1<sup>st</sup> day of December, 2015

  
\_\_\_\_\_  
Notary Public

RICHARD A. KRASLOW  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 4987518  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES MARCH 31, 2018