

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

In the Matter of the Application of Mark Rozof, Linda  
Rozof-Guber, and Judith Teitell, General Partners,

Petitioners,

For the Judicial Winding Up of 392 1<sup>st</sup> Street Company, a  
Domestic Partnership, Pursuant to Section 68 of the  
Partnership Law,

- and -

Arthur Rozof, as a General Partner and in his Representative  
Capacity as Executor of the Estate of Edna Rozof, General  
Partner, deceased,

Respondent.

Index No.: 525611/2019

**AFFIDAVIT OF  
ARTHUR ROZOF**

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

ARTHUR ROZOF, being duly sworn, deposes and says:

1. I am the respondent herein, named in my individual capacity and as executor of my deceased mother’s estate (“Edna’s Estate”). I respectfully submit this affidavit in opposition to the Petition, and in support of my motion: (a) to dismiss the Petition, or (b) if not dismissed, to convert this special proceeding to a plenary action.

2. The petitioners are my adult siblings: Mark Rozof (“Mark”), Linda Rozof-Guber (“Linda”) and Judith Teitell (“Judith” or “Judy”, and together with Mark and Linda, “my Siblings” or “Petitioners”). Together, we own a family enterprise that owns and operates several parcels of real property in Brooklyn and Manhattan. The family business is governed by a 1954 agreement (the “1954 Agreement”), to which we are successors in interest. A true and correct copy of the 1954 Agreement is annexed hereto as Exh. A. Since the 1950’s all of the properties have been owned in the name of a closely-held corporation, D. Karnofsky, Inc. (the “Company”)

except for one parcel in Brooklyn, that is, 392 First Street (the “First Street Property”). The First Street Property was originally owned by the corporation but since 1986 has been owned in the name of 392 First Street Company (the “Partnership”), which is the subject of the instant proceeding commenced by Petitioners. The partners of the Partnership are the same as the shareholders in the Company, that is, my siblings, Edna’s Estate and me.

3. The Petition is improper and devoid of merit and must be dismissed for the myriad reasons discussed at length below and in the memorandum of law submitted in support of my motion to dismiss. However, at its core, there is simply no basis for the commencement of this proceeding pursuant to Partnership Law 68, inasmuch as I have not prevented the sale of the sole asset of the Partnership.

4. My siblings’ hesitancy to sell the property, and their apparent recognition that they cannot do so without some court intervention, is a clear acknowledgement that the issue before this Court is not simply the dissolution and winding up of a partnership, as discussed below. I am advised that, to the extent that they are entitled to court intervention, it should be in the form of an action for a declaratory judgment as to the status of the Partnership, and the rights and obligations of my siblings and me. Significantly, in the Petition, my Siblings actually seek an order “determining that the Partnership has dissolved by operation of law.”

5. Further, despite the additional relief requested by my Siblings in this proceeding, that is, that the Court supervise the winding up of the Partnership, and direct the sale of the First Street Property, the Petitioners’ actions lead to the conclusion that they do not really seek to wind up the Partnership. In the nearly 7 years since Judith’s purported withdrawal from the Partnership (the more recent triggering factor in the claimed dissolution of the Partnership), as well as after the death of our mother, my Siblings have continued to operate the Partnership in

the same manner as always. They are making decisions about and taking action with respect to the Partnership and the First Street Property. Just prior to the commencement of this proceeding they invested \$45,000 in the gut renovation of a single apartment at the First Street Property. They have been collecting rents, filing tax returns, issuing K-1s to all the Siblings (including Judith, who purports to have withdrawn from the Partnership). True and correct copies of K-1s issued to Judith for the years 2018-2020 are annexed hereto as Exhs. B-D. Further, checks drawn on the Partnership's account bear no indication that it is a partnership in dissolution, nor do any other documents produced by my Siblings or the Partnership. True and correct copies of three checks drawn from the Partnership's account in 2020 are annexed hereto as Exh. E. In short, there has been no indicia of any kind that the Partnership is operating as a partnership in dissolution.

6. The fact is that, although nominally a partnership, the Partnership has historically been run and operated as part of the family enterprise rather than as a separate entity, and the documents governing the family enterprise govern the Partnership as well as the other properties held in the name of the Company. Thus, even if Petitioners properly and in good faith commenced this special proceeding, which I do not concede, it is not a simple issue of winding up a partnership in dissolution. There are numerous factual questions and issues that must be addressed and resolved with respect to the Partnership and the Company and the actions and intentions of my Siblings.

7. Notwithstanding the foregoing, my Siblings have commenced this proceeding and continue to maintain that the Partnership has been dissolved, first by virtue of the death of our mother in 2011 and then, faced with my objections thereto, in 2016, by virtue of my sister Judith's purported voluntary withdrawal from the Partnership "effective immediately" in

February 2016. Immediately following Judith's purported withdrawal, my Siblings commenced a proceeding in Nassau County seeking the identical relief that is sought in this proceeding (Index No. 601181/2016 - the "Nassau County Proceeding"). And almost four full years later, they commenced this second special proceeding, again seeking an order and judgment: (1) "determining that the Partnership has dissolved by operation of law"; (2) "supervising the winding up" of the Partnership, purportedly pursuant to Partnership Law §68; (3) authorizing and directing petitioners to sell the assets of the Partnership; and (4) directing the preparation of a final accounting and issuing a declaration that the Partnership's affairs have been wound up.

8. As noted above, my position, as I maintained in the Nassau County Proceeding, as well as in a prior declaratory judgment action that was disposed of in this Court (Index No. 500150/2016 - the "Prior Kings County Action"), is that the Partnership, together with the Company, is part of the one family enterprise, and that the First Street Property, although owned in the name of the Partnership, should be treated like the other properties that are owned in the Company's name. The Partnership's partners have always been the Company's shareholders and members of our family, the First Street Property was run as if it was part of the Company, and Partnership ownership interests were treated similarly as ownership of shares in the Company. My Siblings did not purport to treat the First Street Property separately until faced with my objection to their proposed sale of the property in 2015, based upon my insistence that they comply with the 1954 Agreement's right of first refusal. Despite the abundance of evidence, including the prior course of dealings, my Siblings, in an attempt to strong-arm me into giving up my fair share of the interests in the family's properties, maintain that the Partnership should not be considered part of the family enterprise and that they should be permitted to sell the First Street Property.

9. In seeking Court intervention now, they again argue that the Partnership dissolved upon the death of my mother in 2011, and then again that it dissolved upon the purported withdrawal from the Partnership of my sister Judith in 2016. However, the fact is that following both events, my Siblings have continued to treat the Partnership in the same manner as they always have, and not as a partnership in dissolution.

10. Further, and most telling, is that, despite her purported withdrawal from the Partnership, Judith is named as a petitioner in this proceeding. She is identified in the caption as a General Partner, and the Verified Petition, at paragraph 6, states that “[a]t all relevant times [Judith] was, and is, a general partner of the Partnership (emphasis added).” The sworn assertion that Judith is currently a partner is, to say the least, inconsistent with the assertion that Judith withdrew from the Partnership in 2016. The fact that since that time, the Partnership’s tax returns, the K-1’s, and the distributions to all of my Siblings, continue to show that Judith is still a partner, and clearly demonstrates that her “withdrawal” was a mere sham.

11. The claim that Judith has withdrawn is further belied by the fact that my Siblings continue to run the Partnership as they please, leaving me completely out of all decision making, because they purport to have the majority interest in the Partnership. However, if Judith had truly withdrawn, they would no longer have that majority, and would no longer be properly running the business without my input. They cannot have it both ways.

12. It thus becomes clear that, despite my Siblings’ averments to the contrary, in fact there has been no real withdrawal by Judith, and no dissolution of the Partnership, and no basis for the instant proceeding.

13. Simply stated, and based upon the history set forth herein, it is apparent that my Siblings have brought this proceeding, for which there is no actual legal basis, in order to

pressure me to accede to their demands in connection with settling our numerous disputes regarding the properties owned by our family enterprise, including an action brought by my Siblings in Kings County Surrogate's Court to challenge our mother's will, which left my mother's ownership interests in the family enterprise to me alone.

14. For these reasons and others set forth below, the Petition should be denied.

The Family Enterprise & New York City Properties

15. As mentioned above, since the 1950s, our family has owned and operated a real estate enterprise that owns residential rental property principally in New York County and Kings County (collectively, the "New York City Properties"). It also owns a parcel of currently non-income producing property in Sullivan County. The New York City Properties were:

- 312, 314 and 316 East 6<sup>th</sup> Street in Manhattan (New York County; block/lots 447/12, 13, 14), which is three contiguous parcels whose buildings share a boiler system;
- 315 East 6<sup>th</sup> Street in Manhattan (New York County; block/lot 448/48);
- 531 East 6<sup>th</sup> Street in Manhattan (New York County; block/lot 402/50);
- 677 Vanderbilt Avenue in Brooklyn (Kings County; block/lot 1165/9); and
- 392 First Street in Brooklyn (Kings County; block/lot 971/14) (the "First Street Property").

16. When acquired in the 1950s,<sup>1</sup> the New York City Properties were purchased by the Company, a closely-held New York domestic corporation that was incorporated on or about December 30, 1953, and called D. Karnofsky, Inc. As set forth above, shortly after

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<sup>1</sup> The New York City Properties were acquired in January 1954, except 531 East 6th Street which was acquired in 1958.

incorporation, in January 1954, the Company's original shareholders executed the 1954 Agreement. My Siblings and I are the successors to the original shareholders.

17. The Company was named after our grandfather, and its shareholders have always been family. The Company's original shareholders were our maternal grandfather (David Karnofsky), our father and mother (Joseph and Edna Rozof), and our aunt and uncle (Edna's sister and her husband, Martha and Jacob Hindin).<sup>2</sup>

18. As evidenced by the 1954 agreement, it was always intended that any sale of ownership interests of the Company be only to other owners in the family. Article "FIFTH" of the agreement restricts shareholders from disposing of their interests by granting the non-disposing shareholders a right of first refusal. Pursuant to Article "FIFTH" Judy, Mark and Linda may only sell their interests, for a nominal amount, to me.

19. There are fifty-two (52) outstanding authorized shares in the Company, and each share has equal voting power and rights. Presently, the Company's shareholders are Mark, Linda, Judith, Edna's Estate, and myself. My Siblings own thirty four (34) shares of the Company's shares, which is equal to a combined 65.38% interest in the Company and therefore does not constitute a two-thirds super-majority. I own or control the remaining shares. Our mother, Edna, passed away on December 4, 2011. I am the executor of Edna's Estate, and in her will our mother left her interests in the family enterprise to me. Even absent the will, I have our mother's proxy to vote her shares.<sup>3</sup>

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<sup>2</sup> In connection with the resolution of an intra-family dispute (*Hindin v. Rozof*, No. 002226/2004; Sup. Ct., Kings County), in or about 2007 the Hindin side of the family transferred all of its interests in the Company and New York City Properties to the Rozof side.

<sup>3</sup> I individually own twelve (12) shares, which is equal to a 23.07% interest in the Company. Edna's Estate's shares, which I control as executor and by proxy (our mother gave me her irrevocable proxy to vote her shares of the Company), owns six (6) shares, which is equal to an 11.54% interest in the Company. Mark owns twelve (12) shares, which is equal to a 23.07%

20. Since acquisition of the New York City Properties in the 1950s, our family's real estate enterprise has owned and operated the properties, including renting the residential apartments in the buildings thereon. The New York City Properties, including the First Street Property, are the family enterprise's sole, or most substantial, asset.

21. Beginning in or about 1981, I managed the New York City Properties with our mother out of her home in Kings County (1861 East 4th Street, Brooklyn, NY). In or about 1990 our mother scaled back her management activities and I managed the day-to-day operations for the next twenty-plus years (still out of her home in Brooklyn).<sup>4</sup> After our mother died in December 2011, I continued to manage the business for two years, until December 2013, at which time my Siblings – who had not previously been involved in the management of the business – engaged a third-party property manager to manage the buildings.

22. After our mother died there was no hint of any change as to the way business was being conducted or that the business was winding up. It was business as usual (e.g., the business continued to contract for services, collect rent, and execute residential leases for all of the New York Properties) while I managed the business for the next two years, and that continued when the property manager, hired by my siblings, began in January 2014.

#### The First Street Property & Partnership

23. As noted above, there is a historical wrinkle for the First Street Property in that it is currently titled in the name of the Partnership rather than in the name of the Company.

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interest in the Company. Linda and Judith each own eleven (11) shares (or a 21.15% interest in the Company, each). My Siblings commenced proceedings in Surrogates' Court, Kings County to challenge our mother's will, *Estate of Edna B. Rozof*, No. 2007/12 (Surrogate's Court, Kings Co.) ("Kings County Surrogate's Court Action"). The proceedings in Surrogate's Court are still active and the matter is as yet unresolved.

<sup>4</sup> See also Petition, Exh. "A" (the 2009 Partnership tax returns listing our mother Edna's home).



24. The First Street Property was acquired by the Company in January 1954, as were all the other New York Properties, and was subject to the 1954 Agreement. In 1986, the Company's then-shareholders created the 392 First Street Company partnership for the sole purpose of being the sponsor of a plan to convert the First Street Property into a cooperative apartment building, and the ownership of First Street Property was transferred to the Partnership as reflected in the deed from the Company to 392 First Street Company. (Petition, Ex. B). The transfer was a cashless transaction of \$150,000.00, \$140,000.00 of which was in the form of a mortgage held by the Company. To my knowledge, the \$10,000 difference was never paid, nor were any of the monthly mortgage payments made by the Partnership when due. The partners of the Partnership were the Company's shareholders. There was no partnership agreement, and as discussed below, the Partnership remained subject to the 1954 Agreement.

25. In or about 1990, the plan for conversion was withdrawn. Title to the property was never transferred back to the name of the Company, however, and the First Street Property continued to be owned in the name of the Partnership, whose partners were at all times the Company's shareholders. The Partnership never purchased any other real property, and the First Street Property was and is the Partnership's only asset.

26. Although owned in the name of the Partnership, the First Street Property was always operated and managed in conjunction with the other New York City Properties that are owned in the Company's name, and was always part of the singular family enterprise. Separate meetings of the Partnership were not held. The Partnership and Company operated out of a single office with the same management (first, at our mother's house in Brooklyn; then, at the managing agent's office in Queens). When I managed the business, I was not issued a separate check for management of the First Street Property. The Partnership and Company have

consistently utilized the same accounting firm (of which my sister Linda's husband is a principal) and used the same outside vendors. Monies earned by the Partnership were comingled with the monies earned by the Company. Checks drawn on the Partnership's account are used to pay expenses of the Company (*See, e.g.*, Exh. E). The First Street Property was (and I believe still is) insured under a single policy of insurance along with the other New York City Properties. The First Street Property was run as if it was part of the Company. As stated above, the Partnership's partners have always been the Company's shareholders and members of our family.

27. Furthermore, the Partnership ownership interests were always treated the same as ownership of shares in the Company. Significantly, when a partner died, their interest was treated as though it transferred by inheritance and business continued as usual. Our uncle Jacob Hindin had been one of the original partners, and when he died in the 1990s there was no claim that the partnership had dissolved. His interest was inherited by the Hindin side of the family and the business of the Partnership did not change.

28. Similarly, after our mother, Edna, died in 2011 the business continued in the regular course as though a Company shareholder had died. The Partnership did not take steps to "wind up" its affairs after she died. Her interest in the Partnership was transferred in her will. Between our mother's death in 2011 and the time that my Siblings retained lawyers in the fall of 2015, my Siblings did not take the position that the Partnership had dissolved and was winding up, nor did they undertake any actions to wind up the Partnership's affairs.

29. For example, after our mother passed away the Siblings allowed me to manage the day-to-day building operations of the First Street Property until they appointed a management company in 2013 to manage the First Street Property and to lease the apartments.

Further, in October 2014, the Siblings requested that I sign two business certificates certifying that the partners “intend to or are conducting or transacting business as members of a partnership” in both Kings County and New York County. A true and correct copy of the October 30, 2014 letter from my Siblings’ lawyer, attaching the business certificates, is annexed hereto as Exhibit F. Notably, because none of the properties located in Manhattan are titled in the Partnership’s name, there was no basis for the Siblings to assert that the Partnership did business in Manhattan unless they too were grouping the partnership with the Company as part of one family enterprise.

30. The simple fact is that it was never expected or understood that the Partnership would operate separately from the Company. It was always one business that continued in the usual course even after the death of a shareholder/partner.

31. Then, apparently recognizing the problem they had with relying upon our mother’s death to claim that the Partnership dissolved, on or about February 19, 2016, Judith served a notice purporting to withdraw from the Partnership “effective immediately,” manufacturing the purported withdrawal/dissolution for litigation purposes. (Exh. C to the Petition ). Shortly thereafter my Siblings commenced the Nassau County Proceeding seeking the identical relief as is sought in the instant proceeding. Nevertheless, as set forth above, in the now six years since Judith’s purported “withdrawal” from the Partnership, my Siblings have continued to operate the Partnership, and have not represented in any form whatsoever (with the exception of for purposes of their litigation posture) that the Partnership is in dissolution.<sup>5</sup>

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<sup>5</sup> If the Partnership is deemed to have dissolved upon a partner’s death, then it was immediately reconstituted and continued the same business as before.

My Siblings Plan To Liquidate the New York City Properties and the Prior Kings County Action

32. The family enterprise's usual or regular course of business was not, and is not, and never has been, the sale or exchange of its property.

33. However, in 2015, I learned that my Siblings wished to liquidate all of the New York City Properties and terminate the family enterprise. Without my knowledge or consent, my Siblings had engaged a licensed real estate broker to market and sell all of the New York City Properties.

34. In doing so, my Siblings failed and refused to keep me apprised of the status of the sales, and much of what I learned about their sale efforts is only because of discovery in the action I brought against them related to their unauthorized liquidation plan. Contrary to the Siblings' contention in this proceeding, I did not interfere with their sales efforts inasmuch as I did not know that there was a ready, willing and able purchaser, let alone the purchaser's identity.

35. I did, however, privately state my objection to the sale, and my position that absent my consent they could not sell the New York City Properties. It was then that my Siblings adopted a strategy to differentiate the First Street Property (owned in the name of the Partnership) from the family enterprise, in its attempt to sell that property piecemeal. It was also at that time that my Siblings, for the first time, took the position that the Partnership had dissolved upon our mother's death in 2011 and had been winding up for the four years since her death. This, of course, was belied by the fact that since our mother had died the Partnership took no steps towards winding up its affairs. The purported four year winding up of the Partnership was baseless, and I told them as much. Nonetheless, the Siblings continued with their plans over my objection, challenging him to bring an action to dissolve the business.

The Prior Kings County Action

36. In response to these acts, on January 6, 2016, I commenced an action in this Court (the “Prior Kings County Action”) seeking a declaratory judgment as to the rights and other legal relations between my Siblings and me as to the New York City Properties. My first cause of action alleged that Siblings’ plan to liquidate all of the New York City Properties, was within the purview of Business Corporation Law (BCL) §909. That is, because a sale of the New York City Properties was not within the family enterprise’s usual and regular course of business, my Siblings were obligated to, but failed to comply with their statutory notice and vote obligations, and they did not have the required two-thirds majority absent my consent, so that any sale of the New York City Properties was voidable. I included the First Street Property in my first cause of action.

37. Recognizing the First Street Property anomaly, I also asserted a second cause of action (pleaded in the alternative), which was that to the extent the First Street Property was not subject to BCL §909, then still my consent was required because a sale of the First Street Property was within the purview of Partnership Law §§20-21. I also asserted a third cause of action for an injunction, but I did not make an application for a preliminary injunction. Nor did I file a notice of pendency.

38. In the Prior Kings County Action, my Siblings asserted that they only had elected to sell the single parcel of property owned by the Partnership as part of the winding-up of its affairs. However, the documentary record rebuts that characterization of their actions, and confirms that my Siblings actually planned to liquidate all of the New York City Properties. For example, the broker produced documents pursuant to a subpoena in the Prior Kings County Action, which confirmed that all of the properties were marketed for sale. Further, on or about

November 3, 2015, my Siblings' lawyer sent my lawyer a letter referring to the marketing and sale of all of the properties, and challenging me to commence a dissolution proceeding in Court. A true and correct copy of their counsel's November 3<sup>rd</sup> letter is annexed hereto as Exhibit G; a true and correct copy of the subpoena (without exhibit "C" thereto) is annexed hereto as Exhibit H; and a true and correct copy of excerpts from the broker's document production responding to the subpoena, evidencing the offering of all the properties for sale, is annexed hereto as Exhibit I.

39. Although I had asked them to do so, my Siblings did not keep me updated as to the status of their sales efforts. I was not aware of the scope or status of their (and the broker's) sales activity until receiving the subpoenaed documents in the Prior Kings County Action. For example, until receiving the subpoenaed documents I did not know that they had identified a purchaser and negotiated a contract of sale for the First Street Property in Brooklyn. I did not interfere with that transaction; indeed, I did not know that there was a potential purchaser, let alone the purchaser's identity. I note that while the Petition in this proceeding asserts (Petition at ¶20) that my Siblings' real estate broker "has identified a ready, willing and able purchaser for the Property", this is the identical language that was contained in their 2016 Petition in the Nassau County Proceeding, and as such, I do not know if that is currently true (nor do I know if it was true in 2016).

40. In an attempt to avoid litigating my claims in the Prior Kings County Action, shortly after its commencement, my Siblings had Judith serve the notice purporting to dissolve the Partnership "effective immediately," (*see* Petition, Ex. C), and thereafter commenced the Nassau County Proceeding on February 23, 2016. My Siblings then moved in the Prior Kings County Action to transfer venue to Nassau County, and to dismiss the complaint. I opposed their motion, and this Court denied the motion to change venue and to dismiss the complaint.

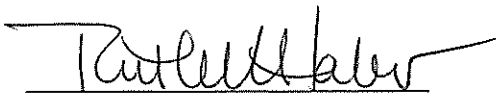
41. My Siblings' actions, after I commenced the Prior Kings County Action, were clearly designed to give them the opportunity to sell the First Street Property, to try to sell the New York City Properties piece-meal absent my consent, and to avoid litigating the question of whether the First Street Property was subject to my BCL §909 claim or otherwise could not be sold under Partnership Law §§20-21.

42. This Court is referred to the accompanying affirmation of my attorney Jay R. Fialkoff for a further discussion of the Nassau County Proceeding and the results of the Prior Kings County Action.

43. For all the foregoing reasons, and those set forth in the accompanying Memorandum of Law and Affirmation of Jay Fialkoff, it is respectfully requested that the Petition be denied in its entirety, or, in the alternative, that the proceeding be converted to a plenary action.

  
ARTHUR ROZOFF

Sworn to before me on the 1 day of November, 2022.

  
Notary Public

RUTH C. HABER  
Notary Public, State of New York  
No. 31-4724468  
Qualified in New York County  
Commission Expires Jan. 31, 2023

**CERTIFICATION OF COMPLIANCE**

I hereby certify that the forgoing affidavit complies with the word limit in Rule 17 of The Uniform Civil Rules for the Supreme Court and the County Court, 22 NYCRR 202.8-b, as it contains 4,609 words, excluding the parts exempted by 22 NYCRR 202.8-b.

*/s/ Jay Fialkoff*  
Jay R. Fialkoff