

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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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 1st 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.  
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x

: Index No. 525611/2019

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: **AFFIDAVIT IN FURTHER**  
: **SUPPORT OF VERIFIED**  
: **PETITION AND IN**  
: **OPPOSITION TO MOTION**  
: **TO DISMISS**

: Name of Assigned Justice:  
: Hon. Leon Ruchelsman

: Return Date: February 15, 2023

x

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

MARK ROZOF, being duly sworn, deposes and says:

1. I am a Petitioner in this action. I submit this affidavit in opposition to the motion of Respondent Arthur Rozof ("Arthur") to dismiss the Verified Petition or alternatively to convert this proceeding to a plenary action and in further support of the Verified Petition for an Order and Judgment: (a) supervising the winding up of 392 1<sup>st</sup> Street Company ("Partnership") under Partnership Law § 68 due to its dissolution by operation of law; (b) authorizing and directing Petitioners to sell the assets of the Partnership, to be applied as provided for in Partnership Law §§ 69 and 71 or as otherwise directed by the Court; and (c) directing that a final accounting be prepared and that upon a final accounting issuing a declaration that the Partnership's affairs have been wound up.

### The Partnership and the Corporation

2. Arthur, and Petitioners Linda Rozof-Guber (“Linda”), Judith Teitell (“Judy”), and I are siblings. We, together with the estate (“Estate”) of our deceased mother, Edna Rozof (“Edna”), are partners in 392 1st Street Company (“Partnership”), a domestic general partnership (Verified Petition, ¶¶ 4-9). Edna died on December 4, 2011 (*id.*, ¶ 8). Arthur is the Executor of the Estate (*id.*). The Partnership has a single material asset, a four-story residential apartment building at 392 1st Street, Brooklyn, New York (“Partnership Property”) (*id.*, ¶¶ 11, 12). There is no partnership agreement for the Partnership (*id.*, ¶ 22).

3. My siblings, the Estate, and I are also the shareholders of a New York corporation, D. Karnofsky, Inc. (“Corporation”), which owns several rental apartment buildings in Manhattan. The Partnership acquired the Partnership Property from the Corporation on March 31, 1986 by recorded deed (Verified Petition, ¶ 12 and Ex. “B” annexed thereto). The interests that my siblings and I have in the Partnership and in the Corporation were acquired through inheritance.

4. Arthur, in his affidavit, sworn to November 1, 2022 (“Arthur Aff.”) (*see* NYSCEF Docket Entry [“DE”] 21), conflates the Corporation and the Partnership into a single entity he calls the “family enterprise” and then argues the shareholder agreement for the Corporation controls the affairs of the Partnership (*id.*, ¶¶ 2, 6, 8). But, there has never been a separate entity known as the family enterprise, which is why Arthur cannot annex to his affidavit a single document referencing this purported “family enterprise.” Although work and efforts relating to the Partnership and the Corporation were often coordinated, the Partnership and the Corporation have always been maintained as separate entities. While the Partnership and the Corporation use the same accounting firm and Managing Agent, they have separate accounting books and

records, separate assets, separate bank accounts, make separate distributions, and file separate tax returns. There are, moreover, material differences between the ownership interests in these two entities, as follows:

	Partnership	Corporation
Mark	18.27	23.07
Linda	16.35	21.15
Judy	16.35	21.15
Arthur	18.27	23.07
E/O Edna	30.76	11.54

(*see* Verified Petition, Ex. “A” [DE 3] and Ex. 17 annexed hereto [Partnership interests]; Arthur Aff. [DE 21], at 7, n. 3 [Corporation interests]; *see also* Verified Petition, Ex. “D,” at 2 [court decision summarizing interests]).

5. Arthur’s assertion that the Corporation owns the Partnership Property is further belied by filings with the Internal Revenue Source (“IRS”). The “U.S. Return of Partnership Income” filed each year by the Partnership had a Form 8825 for the Partnership’s income and expenses wherein the property owned by the Partnership was identified as “392 First Street, Brooklyn, NY 11215” (*see* Ex. 17 annexed hereto). In addition to these annual tax filings, Arthur, after Edna’s death, executed and filed an “Election to Adjust the Basis of Partnership Property Under Internal Revenue Code 754” by which the Partnership elected to “step-up” the tax basis for the Partnership Property (*see* Ex. 18). By making this election, all partners, including Arthur, benefitted personally through a tax reduction from Arthur’s representation to the IRS that the Partnership owned the Partnership Property.

**Arthur Procures a New Will in His Favor from Edna,  
Resulting in Family Disharmony and a Probate Proceeding**

6. After our mother's death on December 4, 2011, Linda, Judy, and I learned for the first time that Arthur, within a year of Edna's death at the age of 91, used his personal attorney to draw a new will for Edna giving all of her interest in the Corporation to Arthur, to the exclusion of Linda, Judy, and me (*see* Ex. 16 annexed hereto; *see also* DE 21, ¶ 19 [Arthur stating that "in her will our mother left her interests in the family enterprise to me"]). Arthur's decision to prioritize money over family harmony by having his personal attorney prepare a new will for our mother, which was done secretly and which materially changed the disposition of our mother's estate in Arthur's favor, resulted in a will contest that began in 2012 and continues to this day before the Kings County Surrogate (*see* Ex. 16). In that proceeding, the Acting Surrogate, in denying summary judgment to Arthur, found that Arthur procured an attorney to prepare a new will for Edna "on a rush basis," that Arthur provided the attorney with a marked-up copy of the existing will with proposed changes from the existing will benefitting him to the detriment of Mark, Linda, and Judy, and that under the new will procured by Arthur the "substantial pre-residuary bequests passe[d] almost entirely to Arthur" (*id.*).

**Arthur Opposes the Sale of the Property and the Winding Up of  
the Partnership in an Effort to Acquire the Partnership Property**

7. Following Edna's death, there were disagreements about what to do with the Partnership Property and with the properties owned by the Corporation. Arthur opposed, and continues to oppose, all efforts to reach a consensus. In 2014, Linda, Judy, and I, though our then-attorney, sent a letter to Arthur's attorney asking to have Arthur sign and return a Business Certificate for Partners to conduct business under the name of the Partnership (*see* DE 27).

Arthur refused to sign and return the Business Certificate for Partners, and thereby refused to acknowledge the partners of the Partnership “intend to or are conducting or transacting business as members of a partnership,” leaving the Partnership in dissolution after Edna’s death.<sup>1</sup>

8. After Arthur’s refusal to execute the Business Certificate for Partners, Linda, Judy and I worked to arrange for the fair market sale of the Partnership Property as part of the winding up of the Partnership’s affairs. This, too, led to conflict with Arthur because Arthur was interested in purchasing the Partnership Property while Linda, Judy, and I had no interest in doing so. As a prospective purchaser, Arthur was conflicted between his interest as a partner of the Partnership in maximizing the sale price for the Partnership Property and his interest as a purchaser in minimizing the sale price.

9. In October 2015, Linda, on behalf of the Partnership, executed a retainer agreement with a licensed real estate broker authorizing it to market the Partnership Property for sale while executing a separate retainer agreement for the marketing of properties owned by the Corporation (*see* DE 28). Neither retainer agreement obligated the Partnership or the Corporation to sell any of the properties (*id.*). The broker thereafter marketed all of the properties for sale so that Linda, Judy and I could determine which of them would be sold. It was our intention to focus on the sale of the Partnership Property as part of the winding up of the Partnership’s affairs, and then thereafter determine which of the Corporation’s properties would be sold and which would be retained based upon the bids received for the properties. A letter notifying Arthur’s attorney, Jay Fialkoff, of the retention of the broker was sent on November 3, 2015, stating:

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<sup>1</sup> Arthur notes the certificate states the Partnership is doing business not only in Brooklyn, where the Property is located, but also in Manhattan (*see* DE 27). Based on this fact, Arthur argues “there was no basis for [Linda, Judy, and I] to assert that the Partnership did business in Manhattan unless they too were grouping the [P]artnership with the [Corporation] as part of one family enterprise” (DE 21, ¶ 29). But, Manhattan was listed as a place where the Partnership was doing business for the simple reason that I, as President of the Partnership, maintained (and continue to maintain) my office in Manhattan, where I have my dental practice and handle the affairs of the Partnership.

The Partnership was dissolved by operation of law under Partnership Law § 62.4 upon the death of Edna Rozof and is winding up its affairs. The sale of the Partnership assets is a normal and expected part of this process. We will keep you apprised of the progress of the winding up, and are glad to discuss with you how the sale proceeds will be maintained pending an agreement or order regarding their distribution

(see Ex. 1, at 1)

10. The broker solicited bids for the Property, while out attorney, John McEntee, notified Mr. Fialkoff of Arthur's right to submit a bid to purchase the Property:

As I stated in my letter to you dated November 3, 2015, 392 First Street Company ("Partnership") retained a licensed real estate broker, Ariel Property Advisors, to market its real property assets. A bid deadline for the property owned by the Partnership has been established for November 18, 2015 at 4:00 p.m. If your client is interested in submitting a bid he should contact Michael Tortorici at 212-544-9500.

I am glad to discuss with you how the sale proceeds will be maintained pending an agreement or order regarding their distribution.

(see Ex. 2).

11. Although our broker received multiple bids to purchase the Property, Arthur did not submit a bid, instead insisting he should be given the right to meet or beat any third-party bids (see affidavit of John P. McEntee, sworn to January 25, 2023 ["McEntee Aff."], ¶ 9 and Ex. 4 annexed thereto). And, rejecting assurances that Linda, Judy, and I did not intend to sell all or substantially all of the properties owned by the Corporation, Arthur commenced an action for a declaration that Linda, Judy, and I could not, under Business Corporation Law § 909, sell all of substantially all of the properties owned by the Corporation and further sought to prevent the sale of the Property. This litigation is discussed in Mr. McEntee's accompanying affidavit.

12. In that action, Arthur asserted the Partnership was not in dissolution despite Edna's death and Arthur's refusal to execute the Business Certificate for Partners. As a result, Judy sent a notice to Arthur, Linda, and me on February 18, 2016 stating that, effective

immediately, she was withdrawing from the Partnership (*see* Verified Petition, ¶ 16, and Ex. “C” annexed thereto), providing a second and independent basis for dissolution of the Partnership.

13. The disclosure of Arthur’s lawsuit to the prospective purchaser of the Partnership Property, revealing the dissension among the partners of the Partnership, scuttled the prospective sale. Arthur continues to the present day to object to the sale of the Partnership Property so that he can purchase it for himself at a favorable price, thereby preventing Linda, Judy, and me from selling the Partnership Property and winding up the Partnership’s affairs.

**Arthur’s Opposition to Judicial Oversight of the Dissolution and Winding Up of The Partnership’s Affairs Cannot Be Reconciled with His Concern About Not Receiving His Fair Share of the Proceeds of the Sale of the Property**

14. Arthur argues that Linda, Judy, and I are attempting to “strong-arm” (DE 21, ¶ 8) and “pressure” him (*id.*, ¶ 13) into giving up his interest in the Partnership. To the contrary, Linda, Judy, and I are asking the Court to supervise the dissolution and winding up of the affairs of the Partnership (*see e.g.* Verified Petition). If Arthur’s true concern was whether he would realize the fair value of his interest in the Partnership, he would join in the application for Court oversight of the sale of the Partnership Property and the distribution of the sale proceeds so that the Court can ensure Arthur receives his fair share. But, his opposition to the application confirms his motive here is to erect barriers to the winding up of the Partnership’s affairs so that he can acquire title to the Partnership Property at a bargain price.

15. Arthur does not complain he has failed to regularly receive documentation about the operations of the Partnership, nor could he do so truthfully, as Linda, Judy, and I have provided Arthur with rent rolls, profit and loss statements, tax returns, and other documents for the Partnership. Rather, he complains Linda, Judy, and I refused to provide him with sale information for the Partnership Property (DE 21, ¶ 34). This is disingenuous, though, as Arthur



was a potential competing bidder who was kept apprised of efforts to sell the Partnership Property (*see* Exs. 1, 2). Linda, Judy, and I were only interested in maximizing the sale price for the Property while Arthur had an interest in minimizing the sale price as a prospective purchaser. It was because of this conflict of interest that we did not give Arthur bid information to allow him to compete unfairly against third-party bidders, who might refrain from investigating the Property and bidding if they learned the bidding process was rigged to favor an insider. Arthur was advised, through his attorney, that if he represented in writing that he was not going to submit a bid for the Partnership Property he would receive the bid information (*see* McEntee Aff., ¶ 9). But, Arthur refused to do so, demanding he be given the “option to match or beat” the highest bid for the Partnership Property (*see* Ex. 4, at 3), a demand that has no basis in any agreement.

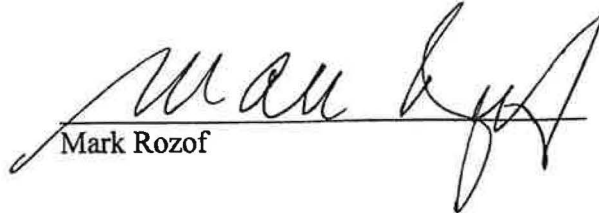
### **Conclusion**

16. The Partnership cannot be wound up without judicial supervision and oversight, as there is simply too much acrimony between Arthur, on the one hand, and Linda, Judy, and me, on the other. Arthur wants to buy the Partnership Property, but only at an insider price to the detriment of his partners. The Partnership cannot practically sell the Partnership Property without Arthur’s consent, while Arthur has taken repeated steps to frustrate the efforts of Linda, Judy, and me to wind up the Partnership’s affairs. Arthur’s assertion that there is no need for judicial supervision and oversight is simply meritless.

17. As a result, I respectfully request, for the reasons stated above, in the Verified Petition, in the accompanying affidavit of John P. McEntee, and in the accompanying Memorandum of Law, that the Court deny Arthur’s motion to dismiss the Verified Petition or alternatively convert this proceeding to a plenary action and instead issue an Order and Judgment



Partnership, to be applied as provided for in Partnership Law §§ 69 and 71 or as otherwise directed by the Court; and directing that a final accounting be prepared and that upon a final accounting issuing a declaration that the Partnership's affairs have been wound up, together with such other and further relief as may be just and proper.

  
Mark Rozof

Sworn to before me this  
20<sup>th</sup> day of January, 2023

  
Notary Public

DAVID SANTOS  
Notary Public, State of New York  
No. 01SA6334917  
Qualified in New York County  
Commission Expires Dec 29, 2023

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