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 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.	Index No. 525611/2019 Name of Assigned Justice: Hon. Leon Ruchelsman Return Date: February 15, 2023

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PETITIONERS' VERIFIED PETITION AND IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS THE PETITION

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Petitioners Mark Rozof ("Mark"), Linda Rozof-Guber ("Linda"), and Judith Teitell ("Judy") respectfully submit this Reply Memorandum of Law in opposition to the motion ("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 1st 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.

PRELIMINARY STATEMENT

This is a dispute among four siblings, Mark, Linda, Judy, and Arthur (collectively, the "Siblings"). The Siblings, together with the estate ("Estate") of their deceased mother, Edna Rozof ("Edna"), are the general partners of the Partnership (Verified Petition [DE 1], ¶¶ 4-8). The Siblings and Edna's estate are also shareholders in a corporation, D. Karnofsky, Inc. ("Corporation") (*see* Affidavit of Mark Rozof, sworn to January 20, 2023 ["Mark Aff."], ¶ 3). Edna died on December 4, 2011 (Verified Petition, ¶ 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"), which it acquired on March 31, 1986 by recorded deed from the Corporation (Verified Petition [DE 1], ¶¶ 11, 12 and Ex. "B" annexed thereto [DE 4]). There is no partnership agreement for the Partnership (Verified Petition, ¶ 22). Upon Edna's death in 2011, the Partnership dissolved automatically (*id.*, ¶ 14; *see also* Partnership Law § 62[4]). The Partnership also dissolved upon Judy's withdrawal on

February 19, 2016 (Verified Petition, ¶¶ 16-17 and Ex. "C" annexed thereto [DE 5]; *see also* Partnership Law § 62[1]).

Arthur refuses to acknowledge the Partnership dissolved by operation of law, however, and objects to the sale of the Partnership Property and the winding up of the Partnership's affairs (Verified Petition, ¶ 29; Mark Aff., ¶ 7). He has sought to frustrate Petitioners' efforts to sell the Partnership Property to a third-party for fair market value in pursuit of his personal goal of acquiring the Partnership Property for himself (Verified Petition, ¶ 30; Mark Aff., ¶¶ 7-11). Arthur argues "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" (Affidavit of Arthur Rozof, sworn to November 1, 2022 ["Arthur Aff."] [DE 21], ¶ 3). Yet Arthur knows that by withholding his consent to a sale of the Partnership Property, he has effectively prevented the sale of the Partnership Property (Mark Aff., ¶ 13). By withholding his consent, Arthur has been able to stymie the Partnership's efforts to sell its only asset, the Partnership Property, and to wind up its affairs (*id.*).

In opposing the Verified Petition, Arthur: (i) conflates the Corporation and the Partnership into a single undocumented entity he calls the "family enterprise;" (ii) argues the Partnership Property is owned by the Corporation despite being titled in the name of the Partnership; and (iii) concludes that Mark, Linda, and Judy, by dissolving the Partnership and attempting to sell the Partnership Property, are violating the Corporation's shareholder agreement and Business Corporation Law § 909, which prohibits the sale of all or substantially all of the assets of a corporation in the absence of the consent of a two-thirds vote of the shareholders (Respondent's Memorandum of Law in Opposition to the Petition and in Support of Motion to Dismiss, dated November 1, 2022 ["Resp. Mem."] [DE 39], at 14-17, 19). Relying on

this syllogism, Arthur argues the Verified Petition fails to state a cause of action. But, the undisputed documentary evidence shows the Partnership is an entity distinct from the Corporation, and as a result the Corporation's shareholder agreement does not control the affairs of the Partnership.

Arthur acknowledges Petitioners commenced a prior proceeding ("Prior Proceeding") in the Supreme Court, Nassau County under Index No. 601181/2016 for the same relief they seek here, namely, judicial oversight over the winding up of the Partnership (Verified Petition, ¶ 33). Arthur moved to dismiss the petition, arguing it failed to state a cause of action based on the same arguments he makes here, while asking alternatively that, if his motion to dismiss was denied, the venue of the proceeding be moved to Kings County where the Partnership Property is located. In his Order deciding the motion, Nassau County Supreme Court Justice Stephen Bucaria held:

> A general partnership dissolves upon the death of a partner (Partnership Law § 62[4]). Additionally, dissolution is caused by the express will of any partner when no definite term or particular undertaking is specified (Partnership Law § 62[1][b]). Thus, petitioners have clearly stated a claim for dissolution of 392 1st Street Company.
>
> Arthur Rozof has submitted tax returns and other documents to the IRS showing that 392 1st Street Company, not D. Karnofsky, is the owner of the property. Respondent is estopped from contradicting representations made to the taxing authority (*Mahonev-Buntzman v Buntzman*, 12 NY3d 415, 422 [2009]). Since title is in the partnership, the D. Karnofsky shareholder agreement is not controlling. Accordingly, respondent's motion to dismiss the petition for failure to state a cause of action is denied.

(Verified Petition, Ex. "D" [DE 6], at 2-3).

After the Prior Proceeding was transferred to Kings County, given Index No. 515373/2016 and assigned to the Hon. Lawrence Knipel, years went by without a decision on the Petition, despite repeated requests (*see* Affidavit of John P. McEntee, sworn to January 25, 2023

["McEntee Aff."], ¶ 18 and Exs. 11-15 annexed thereto). As a result, Petitioners commenced the instant proceeding, placing venue in Kings County. And, although Arthur argues that Justice Knipel, in the Prior Proceeding, "declined to make the determination that the Partnership was dissolved" (Resp. Mem., at 2), the record in that proceeding unequivocally shows Justice Knipel has not, to this day, made *any* determination.

ARGUMENT

Point I

THE CORPORATION'S SHAREHOLDER AGREEMENT DOES NOT CONTROL THE AFFAIRS OF THE PARTNERSHIP

Arthur admits the Partnership has title to the Partnership Property (Arthur Aff., ¶ 2 ["The [Partnership Property] was originally owned by the corporation but since 1986 has been owned in the name of [the Partnership]"]). He dismisses this fact, though, as a mere "historical wrinkle" (Resp. Mem., at 4), arguing the Partnership Property, while "titled in" the name of the Partnership, is part of a "family enterprise" requiring the Court to apply the terms of the Corporation's shareholder agreement to the affairs of the Partnership (*id.* at 14-17). This argument fails.

First, the Partnership and the Corporation are separate entities, maintaining separate books and accounts and filing separate tax returns (Mark Aff., ¶ 4). Although Arthur alleges the Partnership ownership interests were always treated the same as the Corporation ownership interests (Arthur Aff., ¶ 27), contemporaneous documentation establishes this to be untrue, for the tax returns for the Corporation and the Partnership show the ownership interests differ materially, as follows:

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

(Verified Petition, Ex. "A" [IRS Schedule K-1 reflecting Partnership interests] [DE 3]; Arthur Aff. [DE 21], at 7, n. 3 [Corporation interests]).

Second, while New York recognizes different types of business entities such as corporations, partnerships, and limited liability companies, it does not recognize a "family enterprise" as a legal entity. The fact that the shareholders of the Corporation and the partners of the Partnership are the same, and the Corporation and the Partnership use the same accounting firm and Managing Agent, does not make the Corporation and the Partnership a single entity, as they maintain separate books and records, have separate assets, have separate bank accounts, make separate distributions, and file separate tax returns (Mark Aff., ¶ 4; *see Salcedo v Demon Trucking, Inc.*, 146 AD3d 839, 841 [2d Dept 2017] [rejecting claim that related companies operated as a single integrated entity]; *Longshore v Paul Davis Sys. of Capital Dist.*, 304 AD2d 964, 965 [3d Dept 2003] [rejecting claim that closely associated corporations sharing directors and officers were alter egos of each other]; *Total Care Health Indus., Inc. v Dep't of Social Services*, 144 AD2d 678, 678 [2d Dept 1988] [same]).

Third, Justice Bucaria ruled that the Partnership, not the Corporation, owns the Partnership Property, and further ruled that because "title is in the partnership, the D. Karnofsky shareholder agreement is not controlling" (Verified Petition, Ex. "D" [DE 6], at 3). Arthur is collaterally estopped from re-litigating these findings (*see Montoya v JL Astoria Sound, Inc.*, 92 AD3d 736, 738 [2d Dept 2012]). On this point, Arthur does not deny the issues in this proceeding and the Prior Proceeding are identical, or that he had a full and fair opportunity to litigate the issues. Rather, Arthur seeks to evade the application of collateral estoppel by arguing Justice Bucaria's decision and order was "gratuitous" and "mere *dicta*" (Resp. Mem., at 19-20). Expanding on this, Arthur argues Justice Bucaria should not have ruled on the issue of ownership

of the Partnership Property or the applicability of the shareholder agreement to the Partnership because "upon granting the change of venue to a different court, it was not appropriate for Justice Bucaria to take any further action on the Petition or the dismissal motion" (*id.*, at 19).

But, this argument is disingenuous. Arthur asked Justice Bucaria to *first* rule on the merits of the petition in the Prior Proceeding *before* ruling on his motion to change venue (*see e.g.* McEntee Aff., Ex. 10 [Notice of Motion for an Order "[d]ismissing this action . . . and . . . *[i]f not dismissed* . . . [t]ransferring the venue . . ." [emphasis added]; Affidavit of Jay Fialkoff, ¶ 1, requesting an Order "dismissing the Petition . . . and *if* this proceeding is not dismissed, transferring it to Kings County . . ."; Memorandum of Law, at 1, stating that "*[i]f* not dismissed, this special proceeding should be transferred to Kings County . . ."]). Justice Bucaria did precisely what Arthur asked, which was to consider the merits of the petition in the Prior Proceeding based on the documentary evidence Arthur submitted in support of his motion to dismiss comprising a 15-page affidavit and eleven exhibits (*see* McEntee Aff., Ex. 10).

Justice Bucaria held Arthur was judicially estopped under *Mahonev-Buntzman v Buntzman* (12 NY3d 415, 422 [2009]) from asserting the Corporation owned the Partnership Property, as the Partnership filed income tax returns swearing and affirming the Partnership – *not the Corporation* – owned the Partnership Property (Verified Petition, Ex. "D" [DE 6], at 3; *see also Matter of Coven v Neptune Equities, Inc*, 198 AD3d 643, 646 [2d Dept 2021]; *Man Choi Chiu v Chiu*, 125 AD3d 824, 826 [2d Dept 2015] [same]). On this point, Arthur executed 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 upon Edna's death (*see* Mark Aff., ¶ 5 and Ex. 18 annexed thereto). By making this election, Arthur benefitted personally, through a tax reduction, from his representation to the IRS that the

Partnership owned the Partnership Property. Having represented to the IRS that the Partnership owns the Partnership Property, Arthur is judicially estopped from arguing otherwise.

Fourth, none of the cases cited by Arthur hold, or support his position that, the Corporation's shareholder agreement controls the affairs of the Partnership.

Point II

THE VERIFIED PETITION ESTABLISHES THE NEED FOR JUDICIAL OVERSIGHT OF THE WINDING UP OF THE PARTNERSHIP, AS THE PARTNERSHIP IS IN DISSOLUTION DUE TO EDNA'S DEATH AND JUDY'S WITHDRAWAL AND THE PARTNERS CANNOT AGREE ON THE WINDING UP OF ITS AFFAIRS

Arthur concedes the Partnership does not have a partnership agreement (*see* Arthur Aff., ¶ 24 ["There was no partnership agreement . . . ."]; *see also* Resp. Mem., at 5 ["No partnership agreement exists . . . ."]). And, Arthur's argument that the Corporation's shareholder agreement governs Partnership affairs (Resp. Mem., at 14-15) fails for the reasons stated in Point I, *supra*. And so, the default provisions of the Partnership Law apply (*see Ederer v Gursky*, 9 NY3d 514, 526 [2007]; *Breidbart v Wiesenthal*, 10 AD3d 346, 348 [2d Dept 2004]).

A general partnership dissolves automatically upon the death of a partner (Partnership Law § 62[4]; *Green v Albert*, 199 AD2d 465, 466 [2d Dept 1993]), or upon a partner's withdrawal (Partnership Law § 62[1][b]; *Aaron v Aaron*, 2 AD3d 942, 944 [3d Dept 2003]). Here, the Verified Petition alleges the Partnership dissolved automatically upon Edna's death (Verified Petition, ¶ 14; *see* Partnership Law § 62[4]) or, alternatively, upon Judy's withdrawal from the Partnership (*see* Verified Petition, ¶¶ 16-17, Ex. C [DE 5]), which provides a second, independent basis for dissolution (Verified Petition, ¶ 27; Partnership Law § 62[1][b]).

Arthur, through his attorney, asserted he "had the right to obtain court supervision of any winding up process pursuant to Section 68 of the Partnership Law of the State of New York," including "the appointment of a receiver for the [P]artnership" (McEntee Aff., ¶ 10 and Ex. 4

annexed thereto, at 3). And yet, he fails to explain why Mark, Linda, and Judy do not have the same right.

Arthur characterizes Judy's withdrawal notice as "manufactured" and a "sham" (Resp. Mem., at 10, 14, 16). But, Arthur does not explain what he means by this. A "sham" withdrawal notice would suggest Judy's notice, while in proper form, was insincere because she did not actually intend to withdraw from the Partnership and cause a dissolution (*see Fleisher v Terker*, 259 NY 60, 61 [1932] [sham is a "matter false in fact although good in form"]). But, Arthur provides no evidence supporting the idea that Judy did not intend to withdraw from the Partnership, and the idea is belied by Judy's commencement of this proceeding to judicially wind up the affairs of the Partnership.

It is a basic principle of partnership law that, absent a written partnership agreement establishing a fixed duration for a partnership, "[n]o one can be forced to continue as a partner against his will" (*Napoli v Domnitch*, 18 AD2d 707, 708 [2d Dept 1962], *affd* 14 NY2d 508 [1964]; *see DeMartino v Pensavalle*, 56 AD2d 589, 589 [2d Dept 1977]). In the last year of Edna's life, Arthur, accompanied by his attorney, procured a new will for Edna giving all of her interest in the Corporation to Arthur, to the exclusion of Mark, Linda, and Judy (Mark Aff., ¶ 6), leading to a will contest alleging undue influence that continues to this day (*id.*, ¶¶ 5-6; McEntee Aff., ¶ 20, Ex. 16 [Surrogate's Court Decision]). And then, in January, 2016, Arthur sued Judy (McEntee Aff., ¶¶ 11-12, Ex. 5 [Complaint in Kings County Action]). Arthur, who concedes "there is discord amongst Arthur and Petitioners" (Resp. Mem., at 18), could therefore hardly have been shocked when Judy, the following month, sent a notice withdrawing from the Partnership to free herself from having to continue to be Arthur's partner (*see* Verified Petition, Ex. C).

Arthur cannot argue Judy was unable to withdraw from the Partnership and cause its dissolution by operation of law because Judy's right to do so is expressly found in Partnership Law § 62(4). And so, he argues the dissolution is "an attempt to strong-arm [him] into giving up [his] fair share" of the Partnership assets (Arthur Aff., ¶ 8). But, this is mere hyperbole, for if Arthur was truly concerned about getting his fair share of the Partnership assets he would welcome, indeed joyfully embrace, this application for the judicial winding up of the Partnership's affairs. The truth, however, as revealed by Arthur's own attorney, is that what Arthur really wants is the "option to match or beat" third-party bids for the Partnership Property (McEntee Aff., ¶ 9 and Ex. 4 annexed thereto, at 3), which he would not have in a public, court-supervised sale.

Point III

PETITIONERS' ACTIONS IN CONTINUING THE OPERATIONS OF THE PARTNERSHIP TO WIND UP ITS AFFAIRS UPON DISSOLUTION ARE AUTHORIZED BY LAW AND DO NOT CONSTITUTE A WAIVER OF PETITIONERS' RIGHT TO DISSOLVE THE PARTNERSHIP

Arthur argues that, even if the Partnership was dissolved by operation of law upon Edna's death or Judy's withdrawal, Petitioners "waived their right to terminate the [P]artnership" because "the Partnership continued its usual course of business" after Judy withdrew from the Partnership (Resp. Mem., at 16). This argument is meritless.

"[T]he continuation of the business of the partnership after its dissolution does not revive the dissolved entity" (*Bitetto v F. Chau & Assocs., LLP*, 10 Misc 3d 595, 601 [Sup Ct, Nassau County 2005] [citations omitted]). When a partnership is dissolved, "the partnership is not terminated, but continues until the winding up of partnership affairs is completed" (Partnership Law § 61; *Lai v Gartlan*, 46 AD3d 237, 245 [1st Dept 2007]; *Matter of Silverberg (Schwartz)*, 81 AD2d 640, 641 [2d Dept 1981]; Partnership Law § 60). After dissolution, "a partner may bind

the partnership by any appropriate action necessary to wind up the partnership affairs or complete transactions unfinished at the time of dissolution" (*Stark v Utica Screw Products, Inc.*, 103 Misc 2d 163, 165-166 [Utica City Ct, 1980] [citing Partnership Law § 66[1]]; *see Matter of Perkins & Will Partnership (Syska & Hennessy)*, 50 AD2d 226, 232 [1st Dept 1975] [a dissolved partnership may, among other things, take and settle accounts, collect partnership property and assets, and watch over the business for the benefit of all those interested]; *In re Belden's Will*, 143 Misc 159, 160-161 [Sur Ct, Westchester County 1932]; *Fox Meadow Partners, Ltd. v Board of Assessment Review*, 273 AD2d 472, 472-73 [2d Dept 2000]).

Arthur points to actions taken by Petitioner to continue the operation of the Partnership such as collecting rent, filing tax returns, issuing IRS K-1 forms to the Siblings, and renovating an apartment within the Partnership Property (Arthur Aff., ¶ 5), which Arthur argues is proof that the Partnership is not in dissolution (Resp. Mem., at 16). But, partnerships do not evaporate into the ether upon dissolution. Rather, "[o]n dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed" (Partnership Law § 61; *Lai*, 46 AD3d at 245 [1st Dept 2007]).

Petitioners are authorized to perform "any act appropriate for winding up partnership affairs" (Partnership Law § 66), including the sale of "all or any part of the partnership assets" (15A NY Jur 2d, Business Relationships § 1730). Arthur's refusal to consent to the sale of the Partnership Property required Petitioners to continue to operate the Partnership, including the collection of rents and the payment of expenses, until they receive a court order authorizing the sale as part of the judicial winding up of the Partnership. Arthur cannot be heard to complain about delay when it is he who, in an effort to purchase the Partnership Property for himself, has

interfered with the winding up of the Partnership (Verified Petition, ¶¶ 29, 30; *see* also Mark Aff., ¶¶ 7-13).

Point IV

A SPECIAL PROCEEDING IS AN APPROPRIATE VEHICLE TO SEEK JUDICIAL OVERSIGHT OF THE DISSOLUTION AND WINDING UP OF THE PARTNERSHIP

Arthur argues this special proceeding should have been brought as, and should be converted to, a plenary action because he is "not aware of any specific statutory authorization permitting a Partnership Law § 68 claim to be brought in a special proceeding" (Resp. Mem., at 21). This argument is meritless.

New York courts permit special proceedings in the absence of express statutory authorization (*see e.g. FGLS Equity LLC v FGLS Equity, LLC*, 2020 NY Slip Op 31476(U), at *7 [Sup Ct, NY County, May 20, 2020] [special proceeding to dissolve and wind up LLC], *aff'd* 193 AD3d 450 [1st Dept 2021]; *Billone v Town of Huntington*, 188 AD2d 526 [2d Dept 1992] [special proceeding for leave to serve late notice of claim]; *Robinson v Government of Malay*., 174 Misc 2d 560, 560-61 [Sup Ct, NY County 2020] [application for pre-action disclosure properly brought by special proceeding]). And, New York courts permit special proceedings for the dissolution and winding up of a partnership (*see e.g. Bakr v Shaker*, 2022 NY Slip Op 33777(U) [Sup Ct, NY County, Oct. 31, 2022] [special proceeding for dissolution under Article 6 of the Partnership Law, dismissed on other grounds]; *Weinstein v Ras Property Management, LLC*, 2020 NY Slip Op 31860 (U) [Sup Ct, NY County, Jun. 15, 2020] [special proceeding for dissolution of limited partnership]; *Schlesinger v Schlesinger*, 11 Misc 3d 1078(A) [Sup Ct, Nassau County, 2006] [special proceeding for dissolution under Article 6 of the Partnership Law]).

In *FGLS Equity*, the court explained that, "[u]nlike the dissolution and winding up provisions in BCL § 1008(a), LLC Law § 703(a) does not specifically direct the institution of a 'special proceeding.' However, it does require an 'application' to the court – effectively a motion. Because a special proceeding is 'a hybrid between an action and a motion,' the court concludes that the relief here was properly sought by way of petition" (2020 NY Slip Op 31476(U), at *7 [citations omitted]).

Similarly, the Partnership Law directs the court to decree a dissolution on "application by or for a partner" under certain enumerated circumstances (Partnership Law § 63), and grants a partner the right, "upon cause shown," to "obtain winding up by the court" (Partnership Law § 68). It does not say that cause may be shown only by plenary action. And, Arthur does not cite any cases holding that an application under Partnership Law Article 6 *must* be brought as a special proceeding. Instead, he cites several cases involving partnerships where plenary actions were brought, yet none states an application for judicial winding up can be brought only through a plenary action.

Arthur also argues that a plenary action would allow discovery of "numerous disputed facts" (Resp. Mem., at 21). But, he fails to identify any *material* disputed fact requiring discovery or warranting a hearing, saying only that "there are numerous highly disputed facts regarding the history of the family enterprise" (Resp. Mem., at 2). This history is immaterial, though, as it is undisputed that Edna died and that Judy withdrew from the Partnership (Arthur Aff., ¶ 19]; *see also* Verified Petition, Ex. "C" [Withdrawal Notice] [DE 5]), with each of these events dissolving the Partnership by operation of law (Partnership Law § 62[4]; *Green*, 199 AD2d at 466; *see also* Partnership Law § 62[1][b]; *Aaron*, 2 AD3d at 944). If Arthur believes there should be adjustments to the distribution of Partnership assets due to historical events as

part of the winding up of the Partnership affairs, he will have the opportunity to present these arguments to the Court (or Court-appointed referee).

Finally, Arthur provides no reason why the Partnership, a partnership-at-will with a single asset, should continue as a Partnership over the objections of Mark, Linda, and Judy (*see Napoli*, 18 AD2d at 708 ["[n]o one can be forced to continue as a partner against his will"]). Arthur concedes "there is discord amongst Arthur and Petitioners" (Resp. Mem., at 18), yet offers no explanation as to why Mark, Linda, and Judy would want to continue to be his partner, with all of the fiduciary duties required among partners. Moreover, Arthur does not explain, given this discord, why *he* wants to remain a partner of Mark, Linda, and Judy.

Even if Arthur were to establish in the Surrogate's Court that the new will he procured for his 91-year-old mother in the last year of her life was not the product of undue influence (*see* McEntee Aff., Ex. 16), he cannot deny the new will he procured favored him to the detriment of Mark, Linda, and Judy (*id*.). Having deliberately chosen money over family harmony, Arthur cannot avoid the consequences of that choice, which is that Mark, Linda, and Judy no longer want to be his partner.

CONCLUSION

Because Arthur, Mark, Linda, and Judy are unable to wind up the affairs of the Partnership without Court supervision, the judicial winding up of the Partnership under Partnership Law § 68 is appropriate and necessary. The Court should therefore grant the Petition and deny the Motion (*see* CPLR 409[b]; *see Matter of FR Holdings, FLP v Homapour*, 154 AD3d at 938).

Dated: Garden City, New York
January 25, 2023

Respectfully submitted,

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WORD COUNT CERTIFICATION

JOHN P. McENTEE, an attorney admitted to practice before the New York State Courts, certifies, pursuant to 22 NYCRR § 202.8-b, that the foregoing Memorandum of Law in Further Support of Petitioners' Verified Petition and in Opposition to Respondent's Motion to Dismiss the Petition dated January 25, 2023, contains 4,115 words, exclusive of the caption, table of contents, table of authorities and signature block; and my certification as to the foregoing relies upon the word count of the word-processing system used to prepare the document, Microsoft Word 2016.

Dated: Garden City, New York
January 25, 2023

By: s/ *John P. McEntee*
John P. McEntee

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