

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

CHRISTINE OWEN, individually, derivatively as a shareholder of ROHM Services Corporation and RHH Mendon Properties, Inc., and as executor of the Estate of Barbara A. Hurlbut,

Plaintiff,

– against –

ROBERT W. HURLBUT and HURLBUT
HEALTH CONSULTING, LLC,

Defendants.

Index No. E2022010777

Hon. Christopher S. Ciaccio

**VERIFIED
AMENDED COMPLAINT**

Plaintiff Christine Owen, in her individual capacity, in her derivative capacity as a shareholder of ROHM Services Corporation and RHH Mendon Properties, Inc., and in her capacity as the executor of the estate of Barbara A. Hurlbut, for her amended complaint against Defendants Robert W. Hurlbut and Hurlbut Health Consulting, LLC, alleges as follows:

PARTIES

1. Plaintiff Christine Owen (“Owen”) is an individual residing at 50 Sheldon Road, Honeoye Falls, New York.
2. Upon information and belief, ROHM Services Corporation (“ROHM”) is a domestic business corporation, duly organized and existing under the laws of the State of New York, with a registered office located at 740 East Avenue, Rochester, New York.
3. Upon information and belief, RHH Mendon Properties, Inc. (“RHH Mendon”) is a domestic business corporation, duly organized and existing under the laws of the State of New York, with a registered office located at 740 East Avenue, Rochester, New York.
4. Owen is a shareholder of ROHM and of RHH Mendon. In this action, she asserts claims both on her own behalf and derivatively on behalf of ROHM and RHH Mendon.

5. By decree of the Honorable Christopher S. Ciaccio, Surrogate, Monroe County, dated January 27, 2023 and duly entered in the office of the Monroe County Surrogate’s Court on January 27, 2023, the Surrogate’s Court admitted to probate the Last Will and Testament of Barbara A. Hurlbut and ordered that Owen be granted letters testamentary to act as the executor of the Estate of Barbara A. Hurlbut (the “Estate”), upon her qualifying for such office.

6. On January 27, 2023, letters testamentary were issued to Owen as executor of the Estate.

7. As the duly appointed executor of the Estate, Owen also asserts claims in this action on behalf of the Estate.

8. Defendant Robert W. Hurlbut (“RWH”) is an individual residing at 295 Ambassador Drive, Rochester, New York.

9. Upon information and belief, Defendant Hurlbut Health Consulting, LLC (“Hurlbut Health”) is a domestic limited liability company, duly organized and existing under the laws of the State of New York, with a registered office located at 740 East Avenue, Rochester, New York.

FACTUAL BACKGROUND

ROHM Services Corporation

10. During his lifetime, Robert H. Hurlbut (“RHH”) founded, owned, and operated a number of businesses, including various skilled nursing home facilities.

11. In 1969, RHH opened The Hurlbut Nursing Home as a skilled nursing home facility in Henrietta, New York.

12. ROHM was founded in 1979 to provide back-office, administrative, and management services to skilled nursing home facilities owned by RHH.

13. Over the next several decades, RHH expanded his businesses to encompass 13 skilled nursing home facilities (the “Hurlbut Nursing Homes”), each of which was formed as a separate corporation or limited liability company.

14. During RHH’s lifetime, ROHM continued to provide back-office, administrative, and management services to the Hurlbut Nursing Homes.

15. As part of his estate-planning process, RHH transferred ownership of the Hurlbut Nursing Homes to his children during his lifetime, with RWH receiving majority ownership interests of between 60 and 70%, and Owen receiving minority ownership interests of between 30 and 40%.

The Marital Trust

16. RHH died in March 2013. He was survived by his wife, Barbara Hurlbut (“Barbara”) and their two children, Owen and RWH.

17. RHH’s will created a marital trust known as the Barbara Hurlbut Marital Trust (the “Marital Trust”) for the benefit of Barbara during her lifetime.

18. Barbara was the lifetime income beneficiary and a permissible principal beneficiary of the Marital Trust. As such, she was entitled to all of the income generated by the Marital Trust, and to so much of the principal as the Trustees of the Marital Trust, in their discretion, deemed appropriate for her comfortable support and general welfare.

19. Owen and RWH were the residual beneficiaries of the Marital Trust. Upon Barbara’s death, Owen and RWH each became entitled to 50% of the assets of the Marital Trust.

20. RHH’s will nominated Jerald J. Rotenberg and Mary E. Ross (the “Original Trustees”) as the Trustees of the Marital Trust.

21. The Original Trustees served as the nominal Trustees for the Marital Trust from its creation in 2013 until their resignation effective May 20, 2020.

22. According to RWH's sworn deposition testimony, between at least January 2016 and May 20, 2020, RWH served as the purported "president" of the Marital Trust.

23. According to RWH's sworn deposition testimony, as president of the Marital Trust, RWH oversaw the finances and administration of the Marital Trust, exercising authority purportedly ceded to RWH by the Original Trustees.

24. Accordingly, RWH was a *de facto* trustee of the Marital Trust.

25. In or about 2014, 100% of the ownership interest in ROHM was transferred from RHH's estate to the Marital Trust.

RWH's Purchase of Owen's Minority Stake in the Hurlbut Nursing Homes

26. In or about August 2016, RWH purchased Owen's minority ownership interest in the Hurlbut Nursing Homes.

27. Specifically, RWH and Owen entered into a Purchase and Sale Agreement dated as of August 30, 2016, pursuant to which Owen sold her ownership interests in various corporations and LLCs to RWH.

28. As part of the Purchase and Sale Agreement, Owen agreed to resign from all positions that she held at ROHM, effective on or before December 31, 2016.

29. Upon information and belief, after August 2016, RWH was the sole owner of all shares or membership interests in each of the Hurlbut Nursing Homes.

RWH's Self-Dealing by Undercharging for ROHM's Services

30. When he completed the acquisition of the remaining ownership interests in the Hurlbut Nursing Homes, RWH did not purchase an ownership interest in ROHM. Accordingly, ROHM remained 100% owned by the Marital Trust.

31. As the president of ROHM, RWH owed a duty to preserve ROHM's commercial interests, to operate the business in a manner that enhanced and protected shareholder value, and to avoid self-dealing or misappropriation in his dealings with ROHM.

32. Upon information and belief, RWH operated ROHM on a near break-even basis, meaning that ROHM charged the Hurlbut Nursing Homes management fees in amounts that would cause ROHM's revenues to approximately equal its expenses each year, so that it reported no profit or only a modest profit.

33. To fulfill this duty, RWH should have stopped operating ROHM on a break-even basis and should have instead begun charging fair-market rates for the services ROHM provided to the Hurlbut Nursing Homes.

34. RWH breached this duty by continuing to operate ROHM on a break-even or nearly break-even basis.

35. Upon information and belief, as of 2014, ROHM was charging the Hurlbut Nursing Homes management fees that were about 4% of revenues.

36. Upon information and belief, at the same time, the average management fee paid by nursing homes was about 5% of revenues, according to information collected by Bonadio & Co., LLP, as accountants for ROHM.

37. At a deposition taken on June 24, 2020, RWH testified that ROHM was "set up" so that it would operate at a "break even with a small profit." He explained that ROHM's revenues were "based on what the nursing homes paid it every year," which was "[j]ust enough to cover the costs and expenses of running ROHM."

38. In other words, by RWH's own admission, he ran ROHM with the goal of realizing little or no profit, contrary to his obligations to ROHM, to the Marital Trust, to Barbara, and to Owen.

39. By operating ROHM on a break-even basis, RWH was enhancing and protecting the value of the Hurlbut Nursing Homes—which he owned—to the detriment of ROHM and the Marital Trust.

Hurlbut Health

40. Upon information and belief, according to publicly available records from the New York Department of State, RWH formed Hurlbut Health in or about September 2017.

41. Neither Owen nor the Marital Trust has ever had any ownership interest in Hurlbut Health.

42. Upon information and belief, Hurlbut Health is owned directly or indirectly by RWH.

Defendants' Misappropriation of ROHM's Business

43. Not content to continue operating ROHM at a breakeven basis for the benefit of his own Hurlbut Nursing Homes, Defendants undertook a scheme between 2019 and 2021 by which they misappropriated the entire ongoing business of ROHM, transferring it to Hurlbut Health.

44. In the years immediately prior to RWH's misappropriation scheme, ROHM employed around 20 to 25 people and was generating annual revenues in excess of \$3 million per year.

45. According to statements prepared by the Marital Trust's accountants, ROHM had an enterprise value of \$959,000 in 2019. Upon information and belief, this understated ROHM's

true value because it failed to account for the fact that RWH had been operating ROHM on a breakeven basis in a manner that benefitted RWH personally.

46. But for RWH's self-dealing, the value of ROHM as a going concern would have been even higher.

47. Upon information and belief, if ROHM had been charging the Hurlbut Nursing Homes market rates for the services it provided to them, then ROHM would have generated at least \$600,000 per year in additional profit, and its value as a going concern would have been approximately \$3 million.

48. Upon information and belief, between late 2019 and mid-2021, Defendants took steps to steal ROHM's business and transfer it to Hurlbut Health.

49. Upon information and belief, all or nearly all persons employed by ROHM at the end of 2019 were employed by Hurlbut Health as of January 1, 2020.

50. In 2019 and prior years, ROHM sponsored a retirement plan under Section 401(k) of the Internal Revenue Code that managed millions of dollars of retirement assets for its employees.

51. The Independent Auditor's Report for the ROHM 401(k) plan, dated October 8, 2020, stated: "Beginning January 1, 2020, The Plan transferred sponsorship to Hurlbut Health Consulting and the name of the Plan was changed to Hurlbut Health Consulting, LLC 401(k) Plan."

52. Upon information and belief, the change in sponsorship of the ROHM Services 401(k) Plan reflects the fact that Hurlbut Health essentially took over ROHM's business enterprise by substituting itself as the employer for ROHM's employees.

53. Upon information and belief, also effective in January 2020, all of the Hurlbut Nursing Homes stopped contracting with ROHM for management services and began contracting with Hurlbut Health for management services.

54. Financial statements for the Hurlbut Nursing Homes further confirm that services previously provided by ROHM in 2019 (and prior years) were moved to Hurlbut Health in January 2020.

55. For example, a December 2020 independent auditor report for The Hurlbut, LLC, one of the Hurlbut Nursing Homes, in a section describing related party transactions, noted that ROHM had provided administrative, purchasing, and accounting functions for the facility in 2019 in exchange for fees of \$395,236.

56. Upon information and belief, in 2020, Hurlbut Health performed the same functions for The Hurlbut, LLC, in exchange for fees of \$492,000.

57. At a deposition taken on June 24, 2020, RWH was asked about steps that he took to respond to a Notice to Produce Documents that had been issued in connection with a matter then pending in Monroe County Surrogate's Court involving the Marital Trust. When asked to identify who had maintained the Marital Trust documents, RWH testified that "it was ROHM Services, which is now Hurlbut Health Consulting."

58. In the same deposition, when RWH was asked about ROHM, he testified that the company was "defunct" and that Hurlbut Health had "replaced" ROHM as of January 2020.

59. Upon information and belief, RWH instructed his attorneys at Harter Secrest & Emery LLP to change the name of the firm's file from ROHM to "Hurlbut Health Consulting (formerly ROHM) re General Corporate Matters."

60. Upon information and belief, Hurlbut Health not only took over ROHM's business using ROHM's employees, but also using the same office space, furniture, fixtures, and equipment.

61. In effect, RWH essentially sold ROHM to Hurlbut Health, without the approval of ROHM's shareholders.

RWH's Attempts to Frustrate the Successor Trustee

62. In June 2020, the Monroe County Surrogate's Court accepted the resignations of the Original Trustees and appointed Tompkins Trust Co., now known as Tompkins Community Bank ("Successor Trustee"), as the successor trustee of the Marital Trust.

63. The Successor Trustee attempted to gather information from RWH and his agents as to the assets of the Marital Trust, including ROHM.

64. RWH actively frustrated the Successor Trustee's efforts to gather information about ROHM and took affirmative steps to conceal relevant information from the Successor Trustee.

65. For example, in January 2021, Edward Radin, counsel for the Successor Trustee of the Marital Trust, sent a request to Bonadio & Co., LLP ("Bonadio") for information about ROHM and its valuation. Robert Nasso of Bonadio drafted a proposed response to Radin, attaching a 2014 valuation report for ROHM. RWH instructed Nasso not to send the valuation report and proposed response to Radin, stating "DONT [sic] give it to him. I forbid it!!!!!!"

66. Upon information and belief, RWH directed his agents and attorneys, including attorneys at the law firm of Pullano & Farrow PLLC, not to cooperate with the Successor Trustee concerning requests for information about ROHM.

67. For example, in the January 2021 email exchange, RWH instructed attorney Mallory Smith of Pullano & Farrow to object to allowing the Successor Trustee to obtain "[t]he

valuation of ROHM” on the basis that “Tompkins is temporary,” has “messed up so many things,” and the valuation of ROHM is “none of [its] business.”

68. Upon information and belief, RWH and his agents acting on his behalf and at his direction actively attempted to frustrate the Successor Trustee’s efforts to obtain information about ROHM, specifically to prevent the discovery by the Successor Trustee of Defendants’ self-dealing and misappropriation.

RWH’s *Ultra Vires* Sale of ROHM’s Assets to Hurlbut Health

69. On or about May 25, 2021, RWH caused ROHM to enter into an asset purchase agreement dated as of May 25, 2021 but purporting to be effective as of January 1, 2020 (the “Asset Purchase Agreement”).

70. The Asset Purchase Agreement purported to sell physical assets owned by ROHM, including furniture (desks, credenzas, chairs, bookshelves, filing cabinets), electronics (computers, servers, tablets, printers, and related equipment), and a vehicle (2017 Honda CRV) for a total purchase price of \$85,538.19.

71. Upon information and belief, the Asset Purchase Agreement was not approved by the Trustee of the Marital Trust, which held 100% ownership in ROHM as of the time the agreement was signed.

72. Upon information and belief, these assets represented substantially all of the personal property owned by ROHM, which ROHM had previously used to conduct its business operations.

73. RWH purported to execute the Asset Purchase Agreement on behalf of the seller in his capacity as the president of ROHM.

74. The Asset Purchase Agreement is void and of no effect because the transaction contemplated therein was an *ultra vires* transaction.

ROHM's Losses

75. As a result of RWH's and Hurlbut Health's misappropriation of ROHM's business, ROHM incurred significant financial losses.

76. ROHM's federal income tax return for 2020 reported gross receipts of only \$52,017 for 2020, far less than it had reported in previous years.

77. ROHM's federal income tax return for 2020 reflected a loss of \$104,050.

78. In effect, Defendants' actions have resulted in Hurlbut Health stepping completely into ROHM's shoes—operating the same business, for the same customers, out of the same offices, using the same employees, furniture, fixtures, and equipment, and bringing in about the same revenue.

79. Defendants have done this without paying either the Marital Trust or Owen anything close to the fair-market value of ROHM as a going concern.

80. Upon information and belief, RWH's self-dealing between 2013 and 2019 caused ROHM to lose revenues of at least \$600,000 per year—nearly all of which would have been profit.

81. Upon information and belief, Defendants' misappropriation of ROHM's business caused a loss in value to ROHM of approximately \$3 million.

Barbara's Death

82. Barbara died on August 20, 2020.

83. Barbara's Last Will and Testament, dated May 22, 2017, named Owen as executor. It further provided that, after payer her debts and making certain bequests, Owen was to inherit the remainder of Barbara's property.

84. Upon information and belief, RWH's conduct in engaging in self-dealing, operating ROHM on a break-even basis, and in misappropriating ROHM's business and assets

had the effect of reducing the annual income of the Marital Trust, which, in turn, reduced the income that Barbara was entitled to receive.

RHH Mendon

85. Upon information and belief, RHH Mendon was formed in 1996 to hold certain real property in the Town of Mendon.

86. In March 2014, ownership of RHH Mendon was transferred from RHH's estate to the Marital Trust.

87. In May 2014, the stock of RHH Mendon was recapitalized to include 100 shares of Class A voting common stock and 9,900 shares of Class B non-voting common stock.

88. In May 2014, RWH and Owen each purchased 30 shares of Class A common stock from the Marital Trust.

89. Upon information and belief, RWH was a director of RHH Mendon between May 2014 and July 2022.

90. Upon information and belief, RWH was the president of RHH Mendon between May 2014 and July 2022.

91. Until the end of 2019, RHH Mendon contracted with ROHM for administrative, purchasing, and accounting services.

92. Beginning in January 2020, RWH caused RHH Mendon to stop contracting with ROHM for administrative, purchasing, and accounting services and to obtain those services instead from Hurlbut Health.

93. Upon information and belief, RWH engaged in acts of self-dealing as president of RHH Mendon, including, without limitation, through his decision to purchase management services from Hurlbut Health (a business wholly owned by RWH) rather than ROHM (a business wholly owned by the Marital Trust).

The Successor Trustee's Distribution of ROHM and RHH Mendon Stock

94. Owen urged Tompkins, as Successor Trustee of the Marital Trust, to investigate potential causes of action held by the trust against RWH and, if appropriate, commence an action against RWH with respect to his self-sealing in connection with ROHM and RHH Mendon.

95. On January 6, 2022, the Successor Trustee filed a petition with the Monroe County Surrogate's Court seeking advice and direction as to various issues concerning the Marital Trust, including whether the Successor Trustee should assert claims against RWH for self-dealing in connection with ROHM and RHH Mendon.

96. The Monroe County Surrogate's Court never ruled on the Successor Trustee's petition for advice and direction.

97. In the absence of advice and direction from the Monroe County Surrogate's Court on the issue, the Successor Trustee determined that it would not take a position as to potential claims that it might have as a shareholder of ROHM and RHH Mendon and that such claims should be asserted, if at all, in direct litigation between RWH and Owen.

98. Upon information and belief, on or about May 13, 2022, RWH's counsel wrote to the Successor Trustee, stating that RWH resigned from any and all officer and director positions he held at ROHM, RHH Mendon, and certain other entities owned in whole or in part by the Marital Trust.

99. Upon information and belief, RWH's resignation left ROHM and RHH Mendon without any officers or directors.

100. The Successor Trustee determined that, in light of the circumstances, and in accordance with the provisions of RHH's Will, it would distribute all shares of ROHM and RHH Mendon held by the Marital Trust in kind to the two beneficiaries, RWH and Owen.

101. Accordingly, on or about September 8, 2022, the Successor Trust distributed all of its shares of ROHM and RHH Mendon to the beneficiaries of the Marital Trust, with Owen receiving 50% of such shares and RWH receiving 50% of such shares.

102. Effective as of the same date, the Successor Trustee assigned to Owen all of its right, title, and interest in any claims relating to the shares of ROHM distributed to Owen, including, without limitation, direct claims and derivative claims on behalf of ROHM. A copy of the assignment is attached as **Exhibit A**.

103. Pursuant to section 626 (b) of the New York Business Corporation Law, Owen has standing to assert derivative claims on behalf of ROHM and RHH Mendon because was a shareholder of ROHM and RHH Mendon at the time that she commenced this action and because her shares in those corporations were devolved upon her by operation of law, because she received them as a distribution from the Successor Trustee of the Barbara Hurlbut Marital Trust pursuant to article V(D)(4) of the Last Will and Testament of Robert H. Hurlbut.

104. In addition, or in the alternative, pursuant to section 626 (b) of the New York Business Corporation Law, Owen has standing to assert derivative claims on behalf of ROHM and RHH Mendon because, at all relevant times, she was a beneficial shareholder by virtue of her remainder interest in the Barbara Hurlbut Marital Trust.

105. For at least the past two years, Owen has, through counsel, in connection with related proceedings pending in Surrogate's Court, raised issues with RWH concerning his self-dealing in connection with ROHM and RHH Mendon. Upon information and belief, any further efforts to secure the initiation of an action against Defendants by ROHM's or RHH Mendon's boards of directors would have been futile because RWH has been in sole control of ROHM and RHH Mendon since 2016 through the present. Furthermore, upon information and belief, if

RWH's purported resignation was effective, then ROHM and RHH Mendon presently have no officers or directors.

106. As described above, Owen also urged the Successor Trustee to assert claims against RWH for his self-dealing in connection with ROHM and RHH Mendon. Upon information and belief, any further efforts to secure the initiation of an action by the Successor Trustee would have been futile because the Successor Trustee determined that it could not assert such claims absent advice and direction from the Surrogate's Court and because the Successor Trustee has since distributed all shares of ROHM and RHH Mendon from the Marital Trust to the remainder beneficiaries, pursuant to the Last Will and Testament of Robert H. Hurlbut, which mooted the Successor Trustee's petition for advice and direction.

RWH's Continued Self-Dealing

107. On December 12, 2022, attorney Christian Valentino of Pullano & Farrow, representing RWH and Hurlbut Health, wrote a letter to Tompkins, as Successor Trustee of the Marital Trust, enclosing a purported invoice from Hurlbut Health.

108. The invoice purports to charge the Marital Trust \$6,000 per month for "Service Fees" between September 2020 and December 2022, for a total of \$168,000. The invoice itself contains no backup or explanation as to what the basis for the service fees are.

109. The Pullano & Farrow cover letter accompanying the invoice claims that Hurlbut Health is charging these fees to the Marital Trust on the basis of a purported agreement entered into between the Original Trustees and ROHM, in which the Original Trustees agreed to pay ROHM \$6,000 per month for "administrative services for the Marital Trust."

110. The Pullano & Farrow letter falsely states that ROHM "was dissolved," and explains that "Hurlbut Health Consulting, LLC picked up where ROHM left of [sic] with regards to those services being provided to the Marital Trust."

111. Upon information and belief, Hurlbut Health has not provided any services to the Marital Trust since September 2020, as the Marital Trust was fully administered by Tompkins as Successor Trustee during that time.

112. The Pullano & Farrow letter and Hurlbut Health invoice evidence RWH's improper self-dealing, as well as Defendants' improper scheme to convert ROHM's business to Hurlbut Health, for the personal enrichment of RWH at the expense of Owen and ROHM.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty—against RWH)

113. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

114. As an officer and director of ROHM, RWH owed fiduciary duties to ROHM and its shareholders, including duties of care, loyalty, and honesty.

115. As a fiduciary, RWH was required to act in the best interests of ROHM and its shareholders and to safeguard corporate assets. RWH owed a duty not to engage in waste, self-dealing, or misappropriation, or to engage in direct competition against ROHM.

116. As set forth above, RWH has breached his fiduciary duties by, among other things:

- a. engaging in self-dealing by undercharging nursing homes owned by RWH for services performed by ROHM;
- b. engaging in self-dealing by causing assets of ROHM (both tangible and intangible) to be transferred or sold for less than fair market value to Hurlbut Health;
- c. engaging in self-dealing in connection with the lease agreements between ROHM and 740 East Avenue Associates, LLC;
- d. misappropriating the business and assets of ROHM;

- e. unlawfully and unfairly competing against ROHM;
- f. failing to exercise due care in the performance of his duties as a director and officer of ROHM;
- g. failing to protect the value of ROHM for its shareholders; and
- h. otherwise abandoning his responsibilities as a director and officer of ROHM.

117. Through these actions, RWH has advanced his own interests to the detriment of ROHM and all those who have had a direct or indirect interest in ROHM during the relevant time period, including Owen, Barbara, the Marital Trust, and the Estate.

118. Owen, ROHM, and Barbara were damaged as a result of RWH's actions.

119. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

120. In addition, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks an award of punitive or exemplary damages because RWH has engaged in a deliberate, conscious, intentional, and willful pattern of conduct calculated to benefit himself at the expense of and harm to ROHM and Owen.

SECOND CAUSE OF ACTION

(Corporate Waste—against RWH)

121. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

122. As an officer and director of ROHM, RWH owed a duty not to engage in waste, self-dealing, or misappropriation of ROHM's assets.

123. As set forth above, RWH has engaged in acts of corporate waste.

124. Owen, ROHM, and Barbara were damaged as a result of RWH's breaches.

125. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

126. In addition, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks an award of punitive or exemplary damages because RWH has engaged in a deliberate, conscious, intentional, and willful pattern of conduct calculated to benefit himself at the expense of and harm to Owen, ROHM, and the Estate.

THIRD CAUSE OF ACTION

(Usurpation of Corporate Opportunities—against RWH)

127. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

128. ROHM had several business opportunities within the knowledge of RWH, who had been a shareholder, director, and officer of ROHM. These business opportunities included, without limitation, ROHM's ongoing business relationships with the Hurlbut Nursing Homes.

129. ROHM had a tangible expectancy in these business opportunities.

130. These business opportunities were essential to ROHM's operations.

131. RWH took ROHM's business opportunities for his own personal gain by arranging for the opportunities to be transferred to Hurlbut Health.

132. As a result of RWH's actions, Owen, ROHM, and Barbara were damaged.

133. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

134. In addition, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks an award of punitive or exemplary damages because RWH has engaged in a deliberate, conscious, intentional, and willful pattern of conduct calculated to benefit himself at the expense of and harm to ROHM and Owen.

FOURTH CAUSE OF ACTION

(Faithless Servant Disgorgement of Compensation—against RWH)

135. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

136. From at least 2014 through his resignation in May 2022, RWH served as the president of ROHM.

137. Upon information and belief, during that time period, RWH received a salary from ROHM for his services as president.

138. For example, upon information and belief, ROHM paid RWH total compensation in excess of \$550,000 per year in 2017, 2018, and 2019, during his period of disloyalty.

139. Upon information and belief, during that time period, RWH may have also received other compensation in the form of bonuses or benefits.

140. As set forth above, RWH acted as a faithless servant by, among other things, engaging in acts of self-dealing, usurping business opportunities, and converting ROHM’s business for his own benefit and for the benefit of Hurlbut Health.

141. Accordingly, RWH should be compelled to disgorge all compensation he received from ROHM during his period of disloyalty.

142. In addition, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks an award of punitive or exemplary damages because RWH has engaged in a deliberate, conscious, intentional, and willful pattern of conduct calculated to benefit himself at the expense of and harm to ROHM, Owen, and Barbara.

FIFTH CAUSE OF ACTION

(Aiding and Abetting a Breach of Fiduciary Duty—against Hurlbut Health)

143. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

144. As set forth above, RWH breached his fiduciary duties to ROHM, Owen, and Barbara.

145. Upon information and belief, Hurlbut Health knowingly induced or participated in the breach by, among other things, receiving and using ROHM's assets and participating in the usurpation of ROHM's business opportunities.

146. As a result of Hurlbut Health's actions, both ROHM, Owen, and Barbara have been damaged.

147. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

148. In addition, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks an award of punitive or exemplary damages because Hurlbut Health has engaged in a deliberate, conscious, intentional, and willful pattern of conduct calculated to benefit himself at the expense of and harm to ROHM, Owen, and Barbara.

SIXTH CAUSE OF ACTION

(Tortious Interference with Prospective Economic Advantage—against RWH and Hurlbut Health)

149. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

150. Upon information and belief, as recently as 2019, ROHM had ongoing business relationships with the Hurlbut Nursing Homes to provide management services.

151. Upon information and belief, these ongoing business relationships generated more than \$3 million in annual revenue for ROHM.

152. RWH and Hurlbut Health knew of ROHM's business relationships with the Hurlbut Nursing Homes.

153. RWH and Hurlbut Health intentionally interfered with ROHM's business relationships using wrongful or tortious means, including self-dealing, misappropriation, and breaches of fiduciary duty by RWH, who was aided and abetted by Hurlbut Health.

154. As a result of RWH's and Hurlbut Health's actions, ROHM was rendered defunct and has no further ongoing business relationships with the Hurlbut Nursing Homes.

155. Upon information and belief, each of the Hurlbut Nursing Homes that formerly contracted with ROHM to provide management services now contract with Hurlbut Health to provide those same services.

156. As a result of RWH's and Hurlbut Health's actions, ROHM, Owen, and Barbara were damaged.

157. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

158. In addition, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks an award of punitive or exemplary damages because RWH and Hurlbut Health have engaged in a deliberate, conscious, intentional, and willful pattern of conduct calculated to benefit himself at the expense of and harm to ROHM, Owen, and Barbara.

SEVENTH CAUSE OF ACTION

(Unfair Competition—against RWH and Hurlbut Health)

159. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

160. As a result of its ongoing business relationships with the Hurlbut Nursing Homes, ROHM had developed goodwill in the industry.

161. Upon information and belief, RWH formed Hurlbut Health to directly compete against ROHM.

162. As set forth above, RWH and Hurlbut Health caused ROHM's business to be misappropriated by and transferred to Hurlbut Health, which has carried on ROHM's former business under a new name.

163. Upon information and belief, RWH and Hurlbut Health acted in bad faith to misappropriate ROHM's business and goodwill, and to use ROHM's assets to unfairly compete against ROHM.

164. Upon information and belief, RWH's and Hurlbut Health's actions have caused Hurlbut Health to be confused for ROHM.

165. As a result of RWH's and Hurlbut Health's actions, ROHM, Owen, and Barbara were damaged.

166. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

167. In addition, on behalf of herself and on behalf of ROHM and the Estate M, Owen seeks an award of punitive or exemplary damages because RWH and Hurlbut Health have engaged in a deliberate, conscious, intentional, and willful pattern of conduct calculated to benefit himself at the expense of and harm to ROHM, Owen, and Barbara.

EIGHTH CAUSE OF ACTION

(Conversion—against RWH and Hurlbut Health)

168. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

169. Upon information and belief, RWH and Hurlbut Health knowingly and wrongfully utilized the ROHM's resources in furtherance of his unlawful competition against ROHM.

170. RWH and Hurlbut Health interfered with ROHM's possession of those resources.

171. The resources knowingly and wrongfully utilized by RWH and Hurlbut Health are rightfully ROHM's resources.

172. As a result of RWH's actions, ROHM, Owen, and Barbara were damaged.

173. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

174. In addition, on behalf of herself and on behalf of ROHM and the Estate M, Owen seeks an award of punitive or exemplary damages because RWH and Hurlbut Health have engaged in a deliberate, conscious, intentional, and willful pattern of conduct calculated to benefit himself at the expense of and harm to ROHM, Owen, and Barbara.

NINTH CAUSE OF ACTION

(Unjust Enrichment—against RWH and Hurlbut Health)

175. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

176. As set forth above, RWH and Hurlbut Health have been enriched at the expense of ROHM, Owen, and Barbara.

177. It would be against equity and good conscience to allow RWH and Hurlbut Health to retain the assets taken from ROHM, or any income generated from those assets.

178. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

TENTH CAUSE OF ACTION

(Quantum Meruit—against RWH and Hurlbut Health)

179. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

180. Upon information and belief, Hurlbut Health has used the assets of ROHM without paying compensation to ROHM at fair market value for those assets.

181. ROHM has a reasonable expectation to receive compensation for the assets used by Hurlbut Health.

182. Accordingly, on behalf of herself and on behalf of ROHM and the Estate, Owen seeks compensatory damages in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION

(Declaratory Judgment—against RWH and Hurlbut Health)

183. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

184. Upon information and belief, RWH caused ROHM to sell or transfer substantially all of its assets to Hurlbut Health.

185. For example, RWH purported to execute, on behalf of ROHM, the Asset Purchase Agreement, pursuant to which ROHM purported to transfer certain movable equipment, computer equipment, and other assets to Hurlbut Health.

186. Upon information and belief, the Asset Purchase Agreement was never authorized by the shareholders of ROHM.

187. Accordingly, the Asset Purchase Agreement is void as a matter of law.

188. There exists a justiciable controversy among the parties as to whether agreements entered into between ROHM and Hurlbut Health—including, without limitation, the Asset Purchase Agreement—are enforceable or whether they are void.

189. Accordingly, Owen seeks a declaration under CPLR 3001 concerning the validity and enforceability of any such agreements.

TWELFTH CAUSE OF ACTION

(Constructive Trust—against RWH and Hurlbut Health)

190. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

191. As set forth above, RWH had a fiduciary relationship with ROHM.

192. As set forth above, RWH abused that fiduciary relationship by misappropriating ROHM's assets and transferring them to Hurlbut Health.

193. Accordingly, Owen seeks the imposition of a constructive trust over the misappropriated assets in order to avoid the unjust enrichment of RWH and Hurlbut Health.

194. Owen has no adequate remedy at law.

THIRTEENTH CAUSE OF ACTION

(Accounting of ROHM—against RWH)

195. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

196. By virtue of RWH's breaches of his fiduciary duties, Owen is entitled to an audit and accounting of ROHM's books and records.

197. Owen requests that the Court order an accounting by RWH of all of the books and records he maintained on behalf of ROHM, including but not limited to all tangible and intangible assets, personal property, real property, income, and bank and investment accounts.

198. Owen has no adequate remedy at law.

FOURTEENTH CAUSE OF ACTION

(Accounting of RHH Mendon—against RWH)

199. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

200. By virtue of RWH's breaches of his fiduciary duties, Owen is entitled to an audit and accounting of RHH Mendon's books and records.

201. Owen requests that the Court order an accounting by RWH of all of the books and records he maintained on behalf of RHH Mendon, including but not limited to all tangible and intangible assets, personal property, real property, income, and bank and investment accounts.

202. Owen has no adequate remedy at law.

FIFTEENTH CAUSE OF ACTION

(Corporate Dissolution of ROHM—against RWH)

203. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

204. RWH and Owen each own 50% of the shares of ROHM.

205. Accordingly, RWH and Owen each represent one-half of the votes of shares entitled to vote in an election of directors of ROHM.

206. Upon information and belief, the shareholders of ROHM are so divided that the votes required for the election of directors cannot be obtained.

207. Upon information and belief, there is internal dissention among the shareholders of ROHM, who are so divided that dissolution would be beneficial to the shareholders.

208. Accordingly, Owen requests a judgment from the Court judicially dissolving ROHM pursuant to section 1104 of the New York Business Corporation Law.

SIXTEENTH CAUSE OF ACTION

(Corporate Dissolution of RHH Mendon—against RWH)

209. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

210. RWH and Owen each own 50% of the shares of RHH Mendon.

211. Accordingly, RWH and Owen each represent one-half of the votes of shares entitled to vote in an election of directors of RHH Mendon.

212. Upon information and belief, the shareholders of RHH Mendon are so divided that the votes required for the election of directors cannot be obtained.

213. Upon information and belief, there is internal dissention among the shareholders of RHH Mendon, who are so divided that dissolution would be beneficial to the shareholders.

214. Accordingly, Owen requests a judgment from the Court judicially dissolving RHH Mendon pursuant to section 1104 of the New York Business Corporation Law.

SEVENTEENTH CAUSE OF ACTION**(Inspection of Corporate Records of ROHM—against RWH)**

215. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

216. As a shareholder of ROHM, Owen has a right under the common law and under section 624 of the New York Business Corporation Law to inspect the corporation's books and records.

217. Upon information and belief, despite his purported resignation as president of ROHM, RWH continues to act as the *de facto* president of ROHM.

218. Upon information and belief, despite his purported resignation as president of ROHM, RWH continues to maintain custody of the corporate books and records at his offices at 740 East Avenue, Rochester, New York, or through attorneys, accountants, and agents retained by RWH on behalf of ROHM.

219. Owen has a legitimate need to inspect ROHM's corporate books and records in order to ascertain claimed mismanagement of the corporation and to determine the fair market value of her shares of the corporation.

220. Accordingly, Owen seeks an order directing RWH to make ROHM's books and records available for inspection by Owen.

EIGHTEENTH CAUSE OF ACTION**(Inspection of Corporate Records of RHH Mendon—against RWH)**

221. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

222. As a shareholder of RHH Mendon, Owen has a right under the common law and under section 624 of the New York Business Corporation Law to inspect the corporation's books and records.

223. Upon information and belief, despite his purported resignation as president of RHH Mendon, RWH continues to act as the *de facto* president of RHH Mendon.

224. Upon information and belief, despite his purported resignation as president of RHH Mendon, RWH continues to maintain custody of the corporate books and records at his offices at 740 East Avenue, Rochester, New York, or through attorneys, accountants, and agents retained by RWH on behalf of RHH Mendon.

225. Owen has a legitimate need to inspect RHH Mendon's corporate books and records in order to ascertain claimed mismanagement of the corporation and to determine the fair market value of her shares of the corporation.

226. Accordingly, Owen seeks an order directing RWH to make RHH Mendon's books and records available for inspection by Owen.

NINETEENTH CAUSE OF ACTION

(Section 720 of the Business Corporation Law—against RWH)

227. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

228. RWH's conduct as an officer and director of ROHM and RHH Mendon, as described above, violated section 720 of the New York Business Corporation Law.

229. Accordingly, on behalf of herself and on behalf of ROHM and RHH Mendon, Owen seeks compensatory damages in an amount to be determined at trial.

TWENTIETH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing—against RWH)

230. Plaintiff repeats and realleges the foregoing paragraphs as if set forth fully herein.

231. Owen and RWH are parties to a certain Purchase and Sale Agreement, dated as of August 30, 2016.

232. Pursuant to the Purchase and Sale Agreement, Owen sold to RWH her ownership interests in certain business corporations and limited liability companies (the “Purchased Entities”), as well as \$3,000,000 worth of her residual interest in the principal balance of the Marital Trust.

233. At the time of the Purchase and Sale Agreement, many of the Purchased Entities

234. Under New York law, the Purchase and Sale Agreement contains an implied covenant of good faith and fair dealing.

235. RWH had an implied obligation not to use his ownership of the Purchased Entities to deprive Owen of her remaining residual interest in the principal balance of the Marital Trust.

236. RWH therefore had an implied obligation, in his capacity as the owner of the Purchased Entities, to continue to use ROHM for back-office, administrative, and management services on behalf of the Purchased Entities, and to pay fair-market rates for such services.

237. RWH breached the implied covenant of good faith and fair dealing by causing some of all of the Purchased Entities to cease using ROHM for back-office, administrative, and management services and to instead purchase those services from Hurlbut Health, resulting in the loss of ROHM’s business.

238. RWH’s actions damaged Owen by reducing the value of her residual interest in the Marital Trust.

239. Accordingly, Owen seeks compensatory damages in an amount to be determined at trial.

REQUEST FOR RELIEF

Plaintiff respectfully requests that the Court enter a judgment as follows:

- A. Awarding Plaintiff compensatory damages against Defendants in an amount to be determined at trial;
- B. Awarding Plaintiff punitive or exemplary damages against Defendants in an amount to be determined at trial;
- C. Directing Defendants to permit Plaintiff to inspect all books and records that they or their agents maintained on behalf of ROHM Services Corporation and RHH Mendon Properties, Inc.;
- D. Declaring that any agreements entered into between ROHM Services Corporation and Hurlbut Health Consulting, LLC are void and unenforceable;
- E. Imposing a constructive trust over all assets diverted from ROHM Services Corporation to Hurlbut Health Consulting, LLC, as well as any income derived or generated therefrom;
- F. Compelling Defendant Robert W. Hurlbut to provide an accounting on behalf of ROHM Services Corporation and RHH Mendon Properties, Inc., for the periods of time in which he served as the president of each;
- G. Judicially dissolving ROHM Services Corporation and RHH Mendon Properties, Inc.;
- H. Awarding Plaintiff her attorneys' fees, disbursements, and costs in this action;
- I. Awarding Plaintiff prejudgment and postjudgment interest; and
- J. Awarding Plaintiff such other and further relief as the Court deems to be just, proper, and equitable.

Dated: Pittsford, New York
March 21, 2023



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VERIFICATION

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

CHRISTINE OWEN deposes and says that she is the plaintiff in this action; that she has read the foregoing amended complaint and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to matters therein stated to be alleged upon information and belief; and that as to those matters she believes them to be true.


Christine Owen

Sworn to before me this
21st day of March, 2023.


Notary Public

ELIZABETH C BRICE
Notary Public, State of New York
No. 01BR5052925
Qualified in Monroe County
Commission Expires December 11, 2025