

SHORT FORM ORDER

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

HON. IRA B. WARSHAWSKY,
Justice.

TRIAL/IAS PART 9

In the Matter of the Application,

Under Section 11-4 of the New York Business
Corporation Law,

For the Dissolution of the Respondent Corporate
Entity by BOB BROOKS and ALEXANDRA
BROOKS, holders of one-half of all issued and
outstanding shares thereof, entitled to vote at an
election of directors

Petitioners,

INDEX NO.: 001572/2009
MOTION DATE: 03/27/2009
MOTION SEQUENCE: 001 and
002

-against-

AQUAL SHIELD, INC., a New York Corporation,
IGOR KORSUNSKY, and YELENA KORSUNSKY,

Respondents.

The following papers read on this motion:

Order to Show Cause, Verified Petition & Exhibits Annexed	1
Notice of Cross-Motion, Affirmation, Affidavit & Exhibits Annexed	2
Memorandum in Opposition to Respondents' Cross-Motion and in Further Support of Petitioners' Motion & Exhibit Annexed	3
Affirmation in Reply of Elise Schwarz	4
Newsday Affidavit of Publication	5

PRELIMINARY STATEMENT

The Petitioners move by Order to Show Cause for an Order dissolving the corporation, and appointing a receiver to sell the business and assets of Aqua Shield, Inc. By way of opposition, the Defendants move for an Order dismissing the Petition for Dissolution, or, alternatively, for an Order compelling arbitration and staying the action pursuant to Civil Practice Law and Rules § 7503 (a), or further in the alternative, staying the action pursuant to Civil Practice Law and Rules § 2204.

BACKGROUND

Petitioners seek dissolution of a privately-held corporation in which Bob and Alexandra Brooks own 100 of 200 authorized shares, and Igor and Yelena Korsunsky own the other 100 shares. Bob Brooks is the inventor of a telescopic swimming pool enclosure for which he obtained U.S. Patent No. 6,367,160. Aqua Shield was formed in 2000, with Igor Korsunsky investing \$100,000.

The parties entered into a Shareholders' Agreement dated as of October 15, 2001.¹ Among the provisions of the Agreement is the following:

19. Any controversy or claim arising out of or relating to this (sic.) Agreement or its breach shall be settled by arbitration in the City of New York in accordance with the governing rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court of competent jurisdiction.

In accordance with the Agreement, the Respondents in this action commenced an arbitration proceeding.² Bob and Alexandra Brooks interposed an Answer to the arbitration claims.³ The American Arbitration Association issued an Order on motions and scheduling orders on February 13, 2009. A preliminary hearing was scheduled for

¹ Exh. "B" (1) to Cross-Motion.

² Demand for Arbitration dated November 8, 2008 at Exh. "B" to Cross-Motion

³ Exh. "C" to Cross-Motion.

April 3, 2009.⁴ The Petitioners herein oppose the dismissal or stay of the action pending arbitration, essentially on the ground that the matter is unique in that there is a 50%/50% deadlock among the shareholders. The Court does not consider this unique, or, in fact, even unusual.

The arbitration proceedings appear to be well underway, and it is reasonable to expect a determination in the near future. The Court declines to dismiss the current action, since jurisdiction of the Court is appropriate for a motion to confirm or disaffirm the findings of the Arbitrator. The Brooks have not sought to stay arbitration, and in fact have actively participated in the process. The commencement of a proceeding in this Court, approximately two months after the Notice of Intent to Arbitrate, is not a motion to stay arbitration, and even if it were interpreted as such, it would be untimely and inappropriate.⁵

The motion to dissolve the corporation and appoint a receiver to sell the assets of the corporation is denied. The action is stayed pursuant to Civil Practice Law and Rules § 7501, pending the outcome of the arbitration proceeding currently underway. The agreement to arbitrate is clear, the parties have participated in the arbitration proceeding, and the arbitrator has determined that the issues presented are arbitrable. Under these circumstances it is appropriate to defer further action to the agreed-upon arbitration process.

This constitutes the Decision and Order of the Court.

June 5, 2009


ENTERED

JUN 11 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE

⁴ Exh. "D" to Cross-Motion.

⁵ *Fiveco Inc. v. Haber*, 11 N.Y.3d 140 (2008).