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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____
Justice

PART 81R

In the Matter of Soheil Davrieh

INDEX NO. 123089/01

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

- v -

*For the Insulation of Kalamita, Inc.
Urban Homes, Inc. and Primary Residence, Inc.*

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

NYS SUPREME COURT
RECEIVED
OCT 15 2008
MOTION SUPPORT OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

THIS REFERENCE IS DISPOSED OF IN ACCORDANCE WITH ACCOMPANYING REPORT / ~~DISPOSITION~~

FILED
OCT 15 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: Oct. 3, 2008

LANCELOT B. HEWITT
SPECIAL REFEREE

J.S.P.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
In the Matter of the Application of SOHEIL DARVISH
holder of the one-half of all the outstanding shares entitled
to vote in an election of Directors of HASLACHA, INC.,
URBAN HOMES, INC., and PRIMARY RESIDENCE,
INC.,

Index No. 123089/01

**Amended
Referee's Report-Findings of
Fact & Conclusions of Law¹**

Petitioner,

-against-

For the Dissolution of HASLACHA, INC., URBAN
HOMES, INC., and PRIMARY RESIDENCE, INC.,
Domestic Corporation Pursuant to §1104 of the BCL,
Respondents.

FILED
OCT 15 2008
COUNTY CLERK'S OFFICE
NEW YORK

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REPORT TO THE SUPREME COURT, NEW YORK COUNTY: IAS PAGE 49

By decision and order of the Honorable Herman Cahn dated June 9, 2005, the issue of whether petitioner Soheil Darvish ("Darvish") was or is a shareholder in petitioner Haslacha, Inc., was referred for assignment to a Special Referee to hear and report with recommendations.

The matter was assigned to the undersigned Special Referee for a hearing on September 6, 2006, at which time counsel for the respective parties appeared. Appearances were as follows:

For Petitioner,
Perry Dean Freedman, Esq.
Law Offices
Ten Bank Street-Suite 650

For Respondents,
Joseph Smargiassi, Esq.²
Joseph & Smargiassi, LLC
Two Rector Street-21st Floor

¹This amended report includes an additional paragraph (i.e., paragraph#19 of the Analysis). The report previously issued to the parties, which is dated September 29, 2008, is therefore nullified and hereby recalled.

²Counsel was substituted in as counsel towards the end of the hearings.

The hearing in the instant matter began on September 6, 2006, and continued over many months.³ The filing of the transcript was not waived by the parties and accompany this report.⁴ The documents admitted into evidence also accompany this report.⁵

Findings of Fact

(1) Darvish was born in 1960 in Tehran, Iran. Darvish and David Shahram Lavian ("Lavian"), an officer of respondent corporations, grew up together in Tehran. The families of both Darvish and Lavian were very close. Darvish left Iran for the US in 1978, when he was 18 years old. Darvish resided in New York and attended the New York Institute of Technology. Darvish resided in New York for two years before moving to Los Angeles, California in 1980. While in Los Angeles, Darvish attended California State, Northridge. Darvish holds a California real estate license. Darvish is married and has three children.

(2) In 1981, Darvish worked in the garment industry as a manager of a store that manufactured ladies garments. In 1982, Darvish operated a wholesale clothing business and in 1985, he became involved in real estate investment and development. Specifically, Darvish was involved in

³By decision and order dated January 19, 2007, a default judgment was entered against respondents. Mr. David Shahram Lavian, an officer of respondent corporations, after discharging counsel, had been appearing on behalf of the corporations at multiple hearing dates. After the issue had been raised after several months, petitioner moved to enter a default judgment against the respondents. The motion was granted and a default judgment was entered against respondents upon the grounds that they were not represented by counsel. Respondents thereafter made a motion to vacate the default judgment. The motion was granted by the court. The hearings thereafter continued.

⁴Only partial transcripts were provided the undersigned Special Referee.

⁵By order issued by JHO Bradley, respondents were precluded from introducing any documents into evidence indicating that Lavian was the sole shareholder of petitioner Haslacha, Inc.

the business of purchasing foreclosed "distressed" properties, renovating them and then putting the properties on the market for sale. Darvish hired contractors to perform the renovation work.

(3) Darvish was reunited with Lavian while in Los Angeles. During the period from 1985 through 1994, Darvish and Lavian often discussed real estate matters. Darvish began owning properties in New York beginning in 1985, when the market in Los Angeles was slow. At that time, Lavian offered to assist Darvish financially with his New York properties but Darvish declined.

(4) Darvish moved back to New York in 1994. Upon his return to New York, Darvish rented Apartment#7C in a building located at 333 East 46th Street, New York. Darvish lived in the apartment between November 1994 and December 1998. When visiting New York from Los Angeles, Lavian often stayed in Darvish's apartment. Darvish later moved to Rosalyn, Long Island, and then in December 1999, he moved back to Los Angeles where his parents, wife and children were residing.

(5) In December 1994, Darvish became aware of a two-family home in foreclosure, which was located at 218 Spencer Street, Brooklyn, New York. The property was in poor physical condition and vacant. Darvish advised Lavian that he intended to purchase the property, renovate it and then sell it. Lavian offered that he and Darvish form a partnership, whereby he [Darvish] would invest money in the property and the two would share the proceeds from the sale of the property on a 50/50 basis. Darvish accepted Lavian's offer. No written agreement, however, was ever executed by Darvish and Lavian with respect to their business arrangement.

(6) Lavian gave Darvish "seed" money for the purchase of the property. The property was also purchased in December 1994. Darvish was responsible for all aspects of the transaction, except

the financing, including retaining contractors, obtaining permits, securing real estate brokers, etc., until the sale of the property. The property was later sold after its renovation.

(7) Darvish and Lavian discussed other properties and orally agreed to the same arrangement of purchase, renovation and sale. Darvish and Lavian also discussed the formation of corporations through which properties would be purchased. Darvish and Lavian agreed to form such corporations and also agreed that they would be 50/50 shareholders in these corporations. Darvish agreed that he would locate properties, hire contractors to renovate the properties, and retain counsel for the Closing. Lavian agreed to provide the financing for the transactions.

(8) Jack Bleier, Esq. ("Bleier") is a partner in the law firm Bleier & Bleier, LLP. Bleier has practiced law in New York State for more than 25 years. Bleier & Bleier, LLP is located in Jamaica, New York. The firm specializes in commercial real estate transactions. Darvish and Bleier first met in the early 1980's, when Darvish went to Bleier's law offices seeking representation for a real estate transaction involving the subletting of office space he owned.

(9) Darvish later retained Bleier's firm to form a number of corporations for the purchase and sale of various properties located throughout the metropolitan area. Generally, these properties were in a state of disrepair. Darvish renovated the properties after purchasing them through these corporations and then sold them. One of the first corporations formed by Darvish was NYBK Development, Inc. The address of NYBK Development, Inc. was 333 East 46th Street, Apartment#7C, New York, Darvish's residence.⁶ The parties later sold the property for a profit.

(10) Darvish and Lavian thereafter jointly purchased approximately 30 other properties over the

⁶A copy of the Certificate of Incorporation for NYBK Development, Inc. was admitted into evidence as Petitioner's Exhibit#21.

years through various corporations, including [for example] NYBK Development, Inc., Glamorous Homes, Inc., and Urban Homes, Inc.⁷ Darvish and Lavian were 50/50 shareholders in each of these corporations and both received a 50/50 share of the proceeds from the sale of each property sold through these corporations. Darvish signed most of the important documents regarding the transaction on behalf of these corporations, including mortgages, promissory notes and guarantees.⁸ Bleier's law firm represented the various corporations formed by Darvish in approximately 50 Closings.⁹ Bleier first met Lavian in the 1990's, when Lavian began attending some of the Closings involving properties purchased and sold through these corporations.

(11) Darvish opened checking accounts at various banks with regard to these corporations. Both Darvish and Lavian were signatories to these accounts. The corporations sometimes loaned or advanced monies to one another. Such monies were loaned or advanced to cover expenses.¹⁰ Darvish retained Marvin Klein, a CPA, as the accountant for the corporations. Klein served as

⁷The Certificates of Incorporation for Glamorous Homes, Inc., and Urban Homes, Inc., were admitted into evidence as Petitioner's Exhibit#s 21A and 21B, respectively.

⁸Copies of some of these mortgages, promissory notes, and guarantees were admitted into evidence as Petitioner's Exhibit#s 4, 7, 9A, 11A, 11B, 12, 13, 12A, 13, 13A, 14, 14A, 15, 15A, 16, 16A, and 40.

⁹Numerous documents were admitted into evidence with regard to Bleier & Bleier's representation of the corporations formed by Darvish for the purpose of buying and selling of various properties. Such documents include certificates of incorporation, contracts of sale, deeds, mortgages, Closing statements, guarantees, promissory notes, and other related materials. These documents were admitted into evidence as Petitioner's Exhibits#s 1 through 71.

¹⁰A copy of a deposit ticket indicating that Primary Residence, Inc. deposited the sum of \$5,000 the account maintained by Urban Homes, Inc. at Commercial Bank of New York was admitted into evidence as Petitioner's Exhibit#53A.

Additionally, copies of various checks drawn on the account of Urban Homes, Inc. and made payable to Glamorous Homes, Inc., and Primary Residence, Inc., in various amounts, was admitted into evidence as Petitioner's Exhibit#s 54A and 55A through H, respectively.

the accountant for these corporations between 1994 and 1997. Darvish primarily dealt with Klein with regard to the transactions involving the corporations.

(12) In the summer of 1997, Darvish saw an advertisement in the New York Times regarding the sale of a building and premises located at 347 East 54th Street, New York. The property was situated near to Darvish's residence at 333 East 46th Street, New York. Ms. Ronnie Cooper was identified in the advertisement as the real estate broker for the property. The building on the premises was residential, but featured a restaurant on its ground floor. The building had been damaged and required renovation, due the collapse of a building next door. Darvish advised Lavian about the property in August, 1997, and the two agreed to pursue purchasing the property.

(13) Darvish and Lavian agreed that Lavian would finance the purchase of the building through Urban Homes, Inc. that Darvish would secure contractors to the renovate the building, that the building would be thereafter sold and that Darvish and Lavian would share 50/50 in the proceeds from the sale of the building. Darvish hired a contractor and made efforts to obtain a mortgage for the purchase of the property through GreenPoint Savings Bank.¹¹ Darvish also retained Bleier & Bleier, LLP to represent the corporation at the Closing. Additionally, Darvish made a deposit in the sum of \$30,000 towards the purchase of the building through Urban Homes, Inc.¹² Darvish also signed a purchase agreement and "Letter of Intent." Both documents were signed in an

¹¹A copy of a GreenPoint "Income Property Application" dated February 25, 1998 was admitted into evidence as Petitioner's Exhibit#63. The document identified "Soheil Darvish" as the "Principal/Borrower#1."

¹²A copy of a check drawn on the Commercial Bank of New York account of Urban Homes, Inc. and made payable to "Robert Spitalinik, As Attorney," in the amount of \$30,000, was admitted into evidence as Petitioner's Exhibit#25. The memo section of the check states: "Deposit E. 54th St."

individual capacity.¹³ Darvish's application for a mortgage with GreenPoint Savings Bank, however, was denied.

(14) Darvish formed a corporation named 347 East 54th Street Corporation after executing the purchase agreement.¹⁴ The purpose of forming this corporation was to purchase the building and premises located at 347 East 54th Street, New York. Thereafter, Darvish sought to obtain a mortgage for the purchase of the property from Fourth Federal Savings Bank, but the application was denied.¹⁵

(15) Darvish later directed Bleier to amend the corporate name of 347 East 54th Street Corporation to Haslacha, Inc.¹⁶ Darvish kept the corporate kit for Haslacha, Inc. in the closet of his apartment but never filled out the information in the kit.¹⁷ Darvish was advised of the amend-

¹³A copy of the purchase agreement in the amount of \$600,000 was admitted into evidence as Petitioner's Exhibit#26A. Benjamin A. Reid, The Administrator of the Estate of Donald Weidman, is identified as the seller in the agreement and "Soheil Darvish" is identified as the buyer. In addition, copies of two checks drawn on the Commercial Bank of New York account of Urban Homes, Inc., and made payable to Reid, as administrator, in the amounts of \$215,000 and \$60,000, respectively, were admitted into evidence as Petitioner's Exhibit#41.

¹⁴A copy of the Certificate of Incorporation of "347 E. 54th St. Corp.," was admitted into evidence as Petitioner's Exhibit#27. Darvish's residential address in New York is set forth in the certificate of incorporation. A copy of the filing receipt for such incorporation was admitted into evidence as Petitioner's Exhibit#28.

¹⁵A copy of a "denial" letter dated February 25, 1998, from Fourth Federal Savings Bank to Darvish, was admitted into evidence as Petitioner's Exhibit#66.

¹⁶ A copy of the Certificate of Incorporation for 347 East 54th Street, New York, was admitted into evidence as Petitioner's Exhibit#27. Attached to this document is a certification stating that a certificate change the name of the corporation to "Haslacha, Inc." was filed on February 25, 1998.

¹⁷The corporate kit for Haslacha, Inc. was admitted into evidence as Petitioner's Exhibit#22.

ment after it had been executed. A \$300,000 mortgage dated May 13, 1998, was eventually obtained by Darvish from Ms. Sheila Haskell, as mortgagee, and Haslacha, Inc., as mortgagor.¹⁸

(16) A bank account was opened for Haslacha, Inc. Lavian was made the only signatory to the account. The decision to make Lavian the only signatory to the account was due to the fact that Darvish traveled back and forth from New York to Los Angeles. Darvish and Lavian later discussed having Darvish included as a signatory on the account, and it was agreed that Lavian would include Darvish on the account, but he never did so. Additionally, insurance was obtained for Haslacha, Inc. Darvish later assigned his "right title and interest" in the purchase agreement to Haslacha, Inc.¹⁹

(17) The Closing for the building was held in the Manhattan office of the seller's attorney in May, 1998. Both Darvish and Lavian attended the Closing. Darvish executed various documents on behalf of Haslacha, Inc., including promissory notes, personal guarantees, and Real

¹⁸A copy of this document was admitted into evidence as Petitioner's Exhibit#39. Darvish executed the mortgage on behalf of Haslacha, Inc. Additionally, a letter dated July 19, 2000, from Jon B. Felice & Associates, P.C. to Darvish, was admitted into evidence as Petitioner's Exhibit#6. In the letter, counsel advises Darvish, as "president" of Haslacha, Inc., that she represented Ms. Haskell, as mortgagee, and that Darvish had failed to pay taxes due on the property on January 1, 2000 and July 1, 2000, totaling \$32,835.24, plus penalties and interest. The letter also states that pursuant to paragraph 14 of the mortgage dated May 13, 1998, Darvish had ten days to provide proof of payment and that his failure to pay "will result in the commencement of foreclosure proceedings."

¹⁹ A copy of a letter dated April 23, 1998, from Bleier & Bleier, LLP to Robert E. Spitalnic, Esq., was admitted into evidence as one of a multitude of documents contained in Petitioner's Exhibit#22. In such letter, counsel advises Mr. Spitalnick that Darvish assigned such rights to the corporation.

Property Transfer Tax Returns (“RPT’s”).²⁰ Darvish was given the keys to the building at the Closing. Darvish kept the Closing documents in the closet of his 333 East 46th Street, New York apartment.²¹ Lavian had access to these documents during his overnight stays in Darvish’s apartment.

(18) Ms. Ronnie Cooper, a real estate broker in New York for about 25 years, also attended the Closing. Ms. Cooper was aware of an “arrangement” between Darvish and Lavian, but had no direct dealings with Lavian prior to the Closing. Lavian did not receive a contract of sale for the property prior to the Closing. Ms. Cooper met Lavian for the first time at the Closing.

(19) Mr. Robert Haskell, a real estate agent in New York for about 40 years, also attended the Closing. Mr. Haskell is the husband of Ms. Sheila Haskell, the mortgagee of the property. Mr. Haskell met Lavian for the first time at the Closing.

(20) After the Closing, Lavian moved into one of the apartments in the building and collected rent from the tenants who resided there. Darvish hired Cyril Choy, a general contractor, to perform renovation services at the building. A general contractor named Compton Merribox had been previously hired by Darvish to work on several properties purchased by Darvish and Lavian. Merribox introduced Choy to Darvish in the 1990's, and Choy began working at these properties as well.²² Darvish supervised the work being done on these properties. Lavian would visit the

²⁰(See, Petitioner’s Exhibit#s22, 35, 36, 37, and 40).

²¹Such documents were also admitted into evidence as Petitioner’s Exhibit#22.

²²Various checks drawn on the Commercial Bank of New York accounts of Urban Homes, Inc., Primary Residence, Inc., and NYBK Development, Inc., and made payable to “Cyril Choy” in various amounts, were admitted into evidence as Petitioners’ Exhibit#s 44, 45A and B, and 46A through F. The memo section in each check identifies the properties Choy worked on and was being compensated for.

properties just before they were to be sold.

(21) Darvish gave Choy the keys to the 347 East 54th Street property so that he and his workers would have access to the building. Choy, together with other workers, performed renovation services on the first and second floors on the 347 East 54th Street, New York property with regard to the bathroom, kitchen, bedroom. They also worked on the plumbing, walls, and floors. When in New York, Darvish supervised Choy and his workers. Lavian supervised the work when Darvish was out of town. Darvish and Lavian paid Choy on a bi-weekly basis.

(22) After three weeks on the job, Lavian ordered Choy and his workers to stop working. Lavian directed Choy to turnover the keys to the building and the two exchanged heated words. Choy telephoned Darvish and advised him of Lavian's actions. Lavian later wrote a check to Choy in the sum of \$500. The renovation work being done at the property had been substantially finished when Lavian instructed the workers to stop working. Lavian eventually changed all the "access" locks to the building, and Darvish was locked out.

(23) Sub-Chapter "S" corporations are created at the election of the shareholder and such elections are filed with the Internal Revenue Service ("IRS"). By "Notice of Acceptance" dated July 6, 1998, Darvish was advised by the IRS that his "election" for Haslacha, Inc. to be treated as a Sub-Chapter "S" corporation had been accepted.²³ Darvish did not seek such an election with the IRS, and was unaware that such an election had been sought.

(24) The assets for Haslacha, Inc. include cash in the bank account, accounts receivables, outstanding loans, and the building. In the year 2000, Haslacha, Inc. was a client of Katzman &

²³A copy of this document was admitted into evidence as Petitioner's Exhibit#67. The notice is addressed to "Haslacha, Inc., c/o Soheil Darvish, 333 East 46th Street, Apartment.7L, New York, N.Y. 10017-7411332."

Wein, LLP, an accounting firm. Darvish was also a client of the firm. The firm prepared Darvish's personal income taxes in the year 2000. Marvin Klein, then a partner at the firm, filed taxes on behalf of Haslacha, Inc. Records maintained by the firm beginning in 2000, however, do not reflect that Darvish is a shareholder in Haslacha, Inc.

(25) Haslacha, Inc. maintains its corporate records at Commercial Bank of New York. Darvish is not listed as a shareholder in these corporate records. Lavian receives all monthly statements and correspondence regarding the corporation from the bank. The bank does not require the production of a corporate resolution when a client opens an account with it, nor does it investigate the truth and accuracy of the information provided to it by the client.

(26) Lavian filed a document with the New York State Department of State indicating that he was the principal in Haslacha, Inc. and that his address was 208 East 51st Street, New York, N.Y. 10022-6520.²⁴

(27) In November, 1998, Darvish opened a mailbox in Brooklyn, New York for his personal use, as well as with respect to Urban Homes, Inc., NYBK Development, Inc., Primary Residence, Inc., Glamorous Homes, Inc., and Haslacha, Inc.²⁵

(28) On or about September 26, 2000, Lavian entered into an agreement to sell the building. Lavian signed the agreement, as seller, and Tzohar, Inc., signed the contract, as buyer²⁶. Darvish was never advised about this agreement.

²⁴A copy of this document was admitted into evidence as Petitioner's Exhibit#69.

²⁵ A copy fo a document dated November 2, 1998, from PostNet to "Soheil Darvish," was admitted into evidence as Petitioner's Exhibit#68. The document sets forth Darvish's signature.

²⁶A copy of document filed Office of the City Register of the City of New York, regarding the execution of this agreement, was admitted into evidence as Petitioner's Exhibit#70.

Conclusions of Law

- (1) The Special Referee's query is limited by the scope of the instant reference (see, Marshall v. Pappas, 143 AD2d 979 [2nd Dept. 1988]-[a reference is controlled by the order of reference, and must comply with the direction contained therein]; Volk v. Volk, 254 AD2d 274 [2nd Dept. 1998]).
- (2) In determining the reference issue, the referee is to consider the character, demeanor, and interests of witnesses. As the trier of fact, the referee determines whether or not the testimony is colored intentionally or unintentionally by those factors (see, Lauria v. Lauria, 187 AD2d 888, 889 [3rd Dept. 1992]).
- (3) Although the witness may have an interest in the outcome of the litigation (see, Coleman v. New York City Tr. Auth., 41 AD2d 812, affirmed 37 NY2d 137 [1975]), which is highly material to the assessment of the witness's credibility (see, Calandra v. Norwood, 81 AD2d 650, 651 [2nd Dept. 1981]; Dobro v. Village of Sloan, 48 AD2d 237, 243-248, appeal dismissed 37 NY2d 804 [1975]-[it is widely accepted that whether a witness has a personal interest in the outcome of the litigation is a factor that must be identified in order to adequately perform the unique duty of weighing the evidence and assessing the credibility of witnesses]).
- (4) As the trier of fact, the referee has the liberty to disbelieve the testimony of such a witness even though it is not otherwise impeached or contradicted (see, Dominquez v. Manhattan & Bronx Surface Tr. Operating Auth., 46 NY2d 528, 534 [1979]-[issues of credibility are for the trier of fact]).
- (5) The parties must establish by a fair preponderance of the credible evidence that the claim they are making is true (see, Spangenberg v. Chaloupka, 229 AD2d 482, 483 [2nd Dept. 1996]). The

evidence must be relevant and have the tendency to make the existence of a fact more probable or less probable than it would be without the evidence (see, Epstein & Wessenberger, New York Evidence 1996/1997 Courtroom Manual 1996, Chap. 3-1, at 35; People v. Lewis, 69 NY2d 321, 325 [1987]-[evidence is relevant if it has any tendency in reason to prove and material fact]).

Evidence which is “evenly balanced” is insufficient to overcome the burden of any applicable presumption (see, Rinaldi & Sons, Inc. v. Wells Fargo Alarm Service, Inc., 39 NY2d 191, 192 [1976]).

(6) When there is no written partnership agreement between or amongst parties, the court must determine whether a partnership in fact exists from, the conduct, intention, and relationship between or amongst the parties (see, Brodsky v. Stadlen, 138 AD2d 662, 663 [2nd Dept. 1988]). No one characteristic of a business relationship is determinative in finding the existence of a partnership in fact. A series of factors are to be considered in determining whether or not there is a partnership: (1) sharing of profits, (2) sharing of losses, (3) ownership of partnership assets, (4) joint management and control, (5) joint liability to creditors, (6) intention of the parties, (7) compensation, (8) contribution of capital, and (9) loans to the organization (id.).

(7) Moreover, a stock certificate is evidence of shareholder status, but is not necessary to its creation. When consideration for shares has been paid in full, the subscriber is considered a holder fo the shares and is entitled to all rights and privileges thereof (see, BCL§504 [I]; In the Matter of Rappaport v. Jileen Security Corp., 110 AD2d 639, 641 [2nd Dept. 1985]).

Analysis

(1) I have considered all of the evidence submitted, and I find that the Darvish has established, by a fair preponderance of the credible evidence, that he is a shareholder in Haslacha, Inc. (see,

Spangenberg v. Chaloupka, supra).

(2) Specifically, I find that Darvish testified credibly with regard to his Iranian origins and the closeness of the Darvish and Lavian families while growing up there (see, Lauria v. Lauria, supra). I find that Darvish testified credibly that he migrated to the US in 1978, and that he lived in New York for 2 years before moving to Los Angeles in 1980 (.id).

(2) I find that Darvish testified credibly that he obtained a real estate license while in California, and that he eventually became involved in buying “distressed” properties that he would later renovate and sell (.id). I also find that Darvish testified credibly that he and Lavian were reunited in California and discussed real estate matters (.id).

(3) I find that Darvish also testified credibly that he moved back to New York in 1994, that he rented Apartment#7C in the building located at 333 East 46th Street, New York, N.Y., that Lavian often stayed with him in his apartment when he traveled from Los Angeles to New York, and that he began traveling back and forth between New York and Los Angeles after moving back to Los Angeles in December 1999 to live with his parents, wife and children (.id).

(4) I find that Darvish testified credibly that in December 1994, he consulted with Lavian and advised him that he intended to purchase a two-family home in foreclosure, which was located at 218 Spencer Street, Brooklyn, New York (.id). I find that Darvish testified credibly that the property was in disrepair and that it was his intention to purchase the property, renovate it and then sell it (.id).

(5) I find that Darvish further testified credibly that Lavian offered that the two form a partnership, whereby Darvish would finance the purchase of the property and the two would share in the proceeds from the sale of the property on a 50/50 basis (.id). I find that Darvish testified

credibly that no written agreement was executed with regard to this business arrangement (.id).

(6) I find that Darvish also testified credibly that Lavian provided the financing for the purchase of the Spencer Street property, that Darvish hired contractors to perform renovation services, that he also retained a real estate broker, as well as to execute the necessary tasks required to sell the property (.id). I find that Darvish also testified credibly that the property was eventually sold (.id).

(7) I find that Darvish testified credibly that he and Lavian thereafter orally agreed to continue the same arrangement they had in the Spencer Street transaction with regard to the purchase, renovation, and sale of other properties to be identified by Darvish (.id). I find that Darvish testified credibly that he and Lavian also orally agreed that they would form corporations through which such properties would be purchased, and that they would be the shareholders in these corporations on a 50/50 basis (.id).

(8) I find that Darvish testified credibly that he retained the law firm of Bleier & Bleier, LLP to form various corporations through which properties would be purchased, and that the law firm thereafter caused to be formed NYBK Development, Inc. Glamorous Homes, Inc., Urban Homes, Inc. and other corporations for this purpose (.id). I find that Darvish testified credibly that checking accounts were opened at various banks for the corporations and that both he and Lavian were signatories on these accounts (.id). I find that Darvish testified credibly that the corporations occasionally advanced or loaned money to one another to cover expenses (.id).

(9) I find that Bleier testified credibly that over time, approximately 30 properties were purchased by Darvish and Lavian through the various corporations formed by them, and that Bleier & Bleier, LLP represented the corporations at approximately 50 Closings regarding these

properties (.id). I find that Darvish testified credibly that he and Lavian, as 50/50 shareholders in these corporations, shared the proceeds of the sale of these properties on a 50/50 basis as well.

(.id). I find that Bleier testified credibly that Darvish signed most of the important documents regarding the transactions in which these corporations involved, including purchase agreements, mortgages, promissory notes, and guarantees, and that he did not meet Lavian until the 1990's, when he began attending some of the Closings.

(10) I find that Darvish testified credibly that in August 1997, he advised Lavian about a property he read about in the New York Times that was located at 347 East 54th Street, New York (.id). I find that Darvish also testified credibly that the building on the property was residential but featured a restaurant on the its ground floor, and that the building required renovation due to damage sustained by it, due to the collapsed building next door (.id).

(11) I find that Darvish testified credibly that he and Lavian agreed to pursue the purchase of the property, and that consistent with their previously agreed upon arrangement, Lavian agreed to finance the purchase of the property, that the property would be purchased through a corporation, that he [Darvish] would, among other things, retain a contractor to renovate the building on the property, that the building would be thereafter sold, and that he and Lavian would share in the proceeds from the sale of the property on a 50/50 basis (.id).

(12) I further find that Darvish testified credibly that 347 East 54th Street Corporation was formed for the purpose of purchasing the 347 East 54 Street property, that he signed a purchase agreement for the property and made \$30,000 deposit through Urban Homes, Inc., that on May 13, 1998, he obtained a \$300,00 mortgage from Ms. Sheila Haskell, that he later directed Bleier & Bleier, LLP to amend the name of 347 East 54th Street Corporation to "Haslacha, Inc.," that he

did not complete the corporate kit for Haslacha, Inc. and was advised later of such amendment, that Bleier & Bleier represented Haslacha, Inc. at the Closing, that he executed various documents on behalf of Haslacha, Inc. at the Closing, including [for example] a promissory note, personal guaranty, and that he was given the keys to the 347 East 54th Street property at the Closing (.id).

(13) I further find that Darvish testified credibly that a bank account was opened for Haslacha, Inc. that Lavian was the only signatory on these account due to his frequent traveling, that Lavian failed to include him as a signatory on the account despite their agreement that he would do so, that insurance was obtained for the corporation, and that he later assigned his rights under the executed purchase agreement to Haslacha, Inc. (.id).

(14) I further find that Darvish testified credibly that he hired Choy as a general contractor to perform renovation services at the property, and that he and Lavian supervised and paid Choy (.id). I find that Choy testified credibly that Lavian terminated the work being done at the property and wrote him a check for \$500 after a heated exchange (.id). I find that Darvish testified credibly that Lavian locked him out of the building by changing the “access” locks, and that he never sought an election with the IRS to treat Haslacha, Inc. as and Sub-Chapter “S” corporation (.id).

(15) Additionally, I find that the witnesses who testified on behalf of Darvish were credible (.id). Conversely, I find that the witnesses who testified on behalf of the respondents were not credible, specifically with respect to their testimony that Lavian was the sole owner of the 347 East 54th Street property (.id).

(16) Further, I find that the totality of documentary evidence, including, but limited to, purchase

agreements, mortgages, promissory notes, guarantees, and other documents executed by Darvish with regard to the various transactions he testified to overwhelmingly corroborate such testimony.

(17) Moreover, I find that given the conduct, intention, and relationship of Darvish and Lavian with respect to the purchase, renovation and sale of the Spencer Street property, and subsequent purchase, renovation and sale of numerous properties through various corporations formed by them, as well as the sharing of the proceeds from the sale of such properties on a 50/50 basis, the “business arrangement” formed by the Darvish and Lavian demonstrates the existence of a partnership, which was created by them for the express purpose of purchasing, renovating and selling properties (see, Brodsky v. Stadlen, supra). Indeed, the evidence of the parties’ intention to form a partnership is clear from the sharing of profits, joint management and control, compensation, and contribution of capital (.id).

(18) I further find that Haslacha, Inc. was a corporation ultimately formed by the partnership created by Darvish and Lavian for the purpose of purchasing the 347 East 54th Street property, and that, as in all prior transactions involving the partnership, Darvish was a 50/50 shareholder in the corporation (i.e., Haslacha, Inc.) through which the property was purchased, and that he is therefore also entitled to a 50/50 share in any sale of the 347 East 54th Street property.

(19) The fact that no shares in Haslacha, Inc. were ever issued to Darvish is irrelevant with regard to his status as a shareholder in the corporation, given the conduct and practice of the parties in the past with respect to the creation of previous corporations without the issuance of shares (see, In the Matter of Rappaport v. Jillen Security Corp., supra).

Conclusion

Upon consideration fo all the testimony presented, the considered credibility to be afforded the witnesses, and the review of all exhibits admitted into evidence, I find that petitioner has demonstrated that he is a shareholder in Haslacha, Inc.

Accordingly, upon presentment of the referenced issue, on a motion made pursuant to CPLR§4403, I report and recommend that this court confirm this report.

Date: October 3, 2008.

Respectfully submitted,

Lancelot B. Hewitt

Lancelot B. Hewitt
Special Referee

FILED
OCT 15 2008
COUNTY CLERK'S OFFICE
NEW YORK