

Decision and Order Appealed From - Hon. Kenneth W. Rudolph
dated April 21, 2009 (4-8)

FILED AND ENTERED
ON 4-23 2009
WESTCHESTER
COUNTY CLERK

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

PRESENT: HON. KENNETH W. RUDOLPH
Justice

Index No.: 1336/09
Motion Date: 3/6/09

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IN THE MATTER OF THE APPLICATION OF
HERMAN I. PORITZKY, HOLDER OF ONE-HALF
OF ALL OUTSTANDING SHARES ENTITLED
TO VOTE IN AN ELECTION OF DIRECTORS,

DECISION

Petitioner
FOR THE DISSOLUTION OF DREAM WEAVER
REALTY, INC., A DOMESTIC CORPORATION

PURSUANT TO SECTION 1104 OF THE
NEW YORK BUSINESS CORPORATION LAW,
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The following papers numbered 1 to 16 read on this petition.

PAPERS NUMBERED

Order to Show Cause/Verified Petition/Exhibit 1	1-3
Answer/Exhibits A-B, DeName	4-6
Reply/Affirmation in Response/Exhibits A-H, Petitioner	7-16

Upon the foregoing papers, it is ORDERED that this petition by Herman I. Poritzky ("petitioner/Poritzky") for an order, pursuant to Business Corporation Law ("BCL") 1104 dissolving Dream Weaver Realty, Inc. ("Dream Weaver/corporation"); pursuant to BCL 1115 and pending dissolution and winding up of Dream Weaver's affairs, enjoining, and restraining Stephen T. DeName ("DeName"), as an officer, director and shareholder of Dream Weaver, from taking any action on behalf of Dream Weaver that is outside of the ordinary course of Dream Weaver's regular and ordinary business activities, including but not limited to obligating Dream Weaver to any creditor or binding it to any contractual obligation; winding up Dream Weaver's affairs including the sale of four (4) parcels of property or distributions in kind of Dream Weaver's assets to petitioner equitably; directing Dream Weaver to pay and/or reimburse petitioner for his attorney's fees, costs and

disbursements incurred in connection with the special proceeding, enjoining and restraining DeName as a person interested in the corporation from expending and disbursing any Dream Weaver funds or property in favor of any attorney-at-law, is decided as follows.

Petitioner acknowledges that he and DeName each own 50% of Dream Weaver's shares. Petitioner seeks dissolution of Dream Weaver, which is in the business of owning, developing, improving, renting, investing in, operating, selling, and developing unimproved parcels of real property; currently Dream Weaver owns and/or operates two parcels of land in Westchester County and two parcels of land in Putnam County. Grounds for dissolution are pursuant to BCL 1104 (a) 1., 2., and 3. based upon the following allegations: the two (2) equal shareholders are so divided that the required votes by either shareholder or directors to conduct and operate the corporation's business cannot be obtained. The level of internal dissension between Poritzky and DeName, who has seized control of the corporation's management, is so intense and irreconcilable that the management of the corporation's affairs, and any votes required for the corporation's action, are impossible to secure; election of directors cannot be held and the board has ceased to function; annual meetings have not and cannot be called or held; and, upon information and belief, an annual meeting has not been held for more than two (2) consecutive years. The dissolution would be beneficial to both shareholders. The only purpose that DeName could have in continuing the corporation is the advancement of his own personal interests, and deriving unwarranted personal benefit, which he presently receives and advantage at the expense of Poritzky, who is not receiving a salary or distributions.

DeName answers contending that grounds for dissolution of the corporation do not exist, while acknowledging that most communications between Poritzky and DeName takes place through their respective counsel. The corporation is solvent and liquidation of the four parcels would be harmful to the corporation and DeName in that less money will be realized on the sale of the properties in dissolution proceedings than on sales to third parties already negotiated and agreed to. The properties currently have a net operating loss offers have been received for all the properties, which upon sale would net the corporation approximately \$540,000., without the necessity of judicial dissolution.

DeName alleges that judicial dissolution will irreparably harm himself and the corporation as lower prices for the corporation's properties will be paid than have been offered by existing prospective purchasers following arms length negotiations. Additionally, Poritzky has reneged and refused to honor his word with respect to the agreements to sell two of the properties and insists on an all or nothing agreement encompassing all four parcels. Poritzky has violated his fiduciary obligations and has jeopardized the sale of the corporation's properties, which had been arranged after months of time, effort and expense. Poritzky's bad faith and oppressive conduct warrant dismissal of this proceeding.

DeName counterclaims for a \$270,000. money judgment against Poritzky for Poritzky's foregoing conduct.

Poritzky replies that a deadlock exists after three years of disputes warranting dissolution and sale of the properties by a receiver.

The Court finds that petitioner has established, on the clear record before the Court and without the necessity of a hearing, that the corporate affairs are rife with dissension and have ultimately resulted in a deadlock precluding the successful and profitable conduct of the corporation's business. See, Goodman v. Lovett, 200 AD2d 670.

Poritzky's petition is granted; the corporation, Dream Weaver is dissolved. Upon the service of a copy of this order with notice of entry by petitioner upon respondents' attorney, the corporation shall cease operating and doing business, and it is further

ORDERED, the branch of petitioner's application seeking the appointment of a receiver herein is granted.

Robert David Goodstein, Esq., 56 Harrison Street, New Rochelle, New York 10801, be and he hereby is appointed receiver with the usual powers and duties to collect and distribute the assets of said corporation, and before entering upon the discharge of his duties, he shall execute and file with the Clerk of the County of Westchester, a surety company bond to the People of the State of New York, in the sum of \$10,000.00 to be approved by this Court, and it is further

ORDERED, that the receiver shall comply with 22 NYCRR 36.4.

ORDERED, that said receiver be and he hereby is authorized, empowered, and directed to sell at public sale all of the property and assets of the corporation upon such terms and conditions as are for the best interests of said receivership, and he is hereby empowered to give to the purchaser or purchasers at such sale a good and sufficient title to the chattels or other property sold at such sale, and it is further

ORDERED, that said receiver collect and deposit to his credit, as receiver, in a receiver's bank account, all accounts receivable, notes and other obligations due to the said corporation, and it is further

ORDERED, that Poritzky and/or DeName deliver to the receiver, all ledger, cash, and account books of the corporation, and each and every document, paper, or memoranda for examination and inspection thereof by the receiver, and it is further

ORDERED, that such further application may be made to this Court under the provisions of this order as the receiver may be advised as proper and necessary for his instruction in the collection, administration, and distribution of the assets of the corporation, and any of the parties hereto may make such application to this Court as they may deem necessary and proper for the full and equitable distribution of the assets of the corporation, and it is further

ORDERED, that the petitioner be paid his commissions, BCL 1217 and his disbursements out of the assets of the corporation.

The Court determines that neither Portizky nor DeName shall pay their attorneys' fees and disbursements with corporation funds.

The foregoing constitutes the Decision and Order of this Court.

DATED: White Plains, New York
April 21, 2009

ENTER,



HON. KENNETH W. RUDOLPH
Justice of the Supreme Court

TO: KENNETH GUNSHOR, ESQ.
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