

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, WESTCHESTER COUNTY

FILED AND ENTERED
ON 4-21 2008
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.: 26056/07
Motion Date: 4/11/08

-----X
In the Matter of the Application of
MHS MANAGEMENT CORP. and
MHS VENTURE MANAGEMENT CORP.,
in its capacity as a member of UTILISAVE, LLC,

Petitioner,
- against -

DECISION

For the Dissolution of UTILISAVE, LLC

Respondent.
-----X

The following papers numbered 1 to 4 read on this motion.

PAPERS NUMBERED

Notice of Petition/Exhibit A 1-3
Verified Answer, UtiliSave 4

Upon the foregoing papers it is ORDERED that this petition by MHS Venture Management Corp., ("MHS") in its capacity as a member of UtiliSave LLC ("UtiliSave") for an order, pursuant to the terms of UtiliSave's January 2006 company operating agreement and Limited Liability Law Article VII, judicially dissolving UtiliSave, and for the costs, disbursements and legal fees incurred in connection with this proceeding, is decided as follows.

UtiliSave is in the business of auditing the utility expenses of its clients, which generally are large corporate or institutional entities. UtiliSave searches for instances in which those clients have been over-billed and pursues on their clients' behalf other ways of obtaining savings in a client's utility expenses.

UtiliSave's operating agreement ("agreement") provides for dissolution and termination of the company. Article VI, Sec. 6.01.(g) of the agreement provides as an event causing dissolution in relevant part as follows: "the inability of the company to reasonably operate as an ongoing concern."


The Court finds that MHS has not prima facie demonstrated that UtiliSave is unable to function as intended or failing financially. See, Schindler v. Niche Media Holdings, LLC, 1 Misc. 3d 713 or that UtiliSave is unable to reasonably operate as a going concern, *supra*, to establish MHS' entitlement to summary dissolution of UtiliSave or to warrant a hearing thereon.

MHS' petition is denied in its entirety and dismissed.

The foregoing constitutes the Decision and Order of this Court.

DATED: White Plains, New York
April 17, 2008

ENTER,



HON. KENNETH W. RUDOLPH
Justice of the Supreme Court

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