

COPY

SHORT FORM ORDER

Index Number: 09563-2010

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

Present: HON. EMILY PINES
J. S. C.

Original Motion Date: 04-01-2010
Motion Submit Date: 04-20-2010
Motion Sequence.: 001 RRC

_____ X

In the Matter of the Application of

**VIRGINIA ZULKOFKSKE,
the holder of fifty percent of all outstanding
shares of the stock of
THE BROOKHAVEN AGENCY,**

Petitioner,

**For the Judicial Dissolution Pursuant of BCL
§ 1104-a of
THE BROOKHAVEN AGENCY, INC.**

-against-

PETER ZULKOFKSKE,

Respondent.
_____ X

Attorney for Petitioner
Carsey & Associates, PC
230 Hilton Avenue
Hempstead, New York 11550-8116

Attorney for Respondent
Benjamin D. Russo, Esq.
73 Benson Avenue
Sayville, New York 11782

ORDERED, that the Petition (motion sequence number 001) for dissolution of the Brookhaven Agency, Inc., brought on by Order to Show Cause (EMERSON, J.) dated March 11, 2010 is referred to a preliminary conference to be held on July 13, 2010 at 9:30 a.m. before the undersigned.

Petitioner, a purported 50% shareholder, commenced this proceeding pursuant to BCL §1104-a seeking judicial dissolution of The Brookhaven Agency, Inc., an accounting and ancillary relief on the ground that the other 50% shareholder, the respondent (her brother), has engaged in oppressive conduct toward her. Petitioner further alleges that respondent has failed and refused to provide an accounting and has acted in a fraudulent manner. According to the Petition, respondent and Marian Zulkofske (the parties' mother) incorporated the corporation on or about January 4, 1982 and were the sole

shareholders, each owing fifty percent of the outstanding stock. In March of 2009, Marian Zulkofske transferred her fifty percent interest to The Marian Zulkofske Revocable Trust (the "Trust"). Pursuant to the terms of the Trust, the shares of the corporation would be distributed to petitioner, and thus, petitioner claims she is a 50% shareholder, entitled to bring this proceeding.

Respondent opposes the Petition and states that he is uncertain whether petitioner is actually the owner of the shares because he does not know whether the Trust ever received the shares. Respondent states that Marian Zulkofske died on June 19, 2009 and he intended to inquire into the execution of her will because he did not believe his mother had the capacity to sign. Respondent further claims that he has not engaged in any oppressive conduct and further that petitioner has not requested an accounting or other information. He also alleges that the corporation is a going business and dissolution is not in its best interests.

In reply, petitioner annexes a copy of the stock certificates indicating that they were signed over to the Trust on April 2, 2009. Petitioner thus reiterates that she is the owner of 50% of the outstanding shares of the corporation.

Here, the evidence before the Court, to wit, the Trust and the stock certificates indicate that petitioner is a 50% owner of the corporation, and thus has standing to bring this proceeding. Respondent has failed to come forward with evidence that the Trust has been invalidated or other challenges to decedent, Marian Zulkofske's wishes for the disposition of the stock.

This matter is set down for a preliminary conference on July 13, 2010 at 9:30 a.m. before the undersigned with chambers located at Supreme Court Suffolk County, One Court Street, Second Floor, Courtroom Two, Riverhead, New York.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: June 3, 2010
Riverhead, New York



EMILY PINES
J. S. C.