

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEOFFREY J. O'CONNELL

Justice

TRIAL/IAS, PART 11
NASSAU COUNTY

In the Matter of the Application of

MITCHELL ZARETSKY,

Holder of Thirty-Tree and One-Third
Percent of AI of the Outstanding Shares of

MAXI-AIDS, INC.,

Petitioner(s),

For the Dissolution of

MAXI-AIDS, INC.,

Respondent(s).

INDEX No. 6438/01

MOTION DATE: 8/13/01

MOTION SEQ. No. 1, 2

The following papers read on this motion:

Order to Show Cause/Affirmation/Affidavit/Exhibits
Answer/Affidavit in Opposition
Order to Show Cause/Affidavit/Exhibits
Reply

Petitioner seeks an Order: (1) dissolving Respondent corporation pursuant to Business Corporation Law ("BCL") § 1104-a(1) and (2); (2) restraining the Respondent corporation from expending or disbursing any corporate funds or property other than in the ordinary course of business, BCL §§ 1113, 1115; and (3) appointing a receiver for the corporation pursuant to BCL §§ 1113, 1202, and 1203. Petitioner also seeks an Order directing the Respondents to furnish the Court with a schedule of corporate assets and liabilities on the return date of this application BCL § 1106(a) and open its books and records to Petitioner, a shareholder owning 33 1/3 percent of the shares of the corporation.

Respondent opposes and seeks an Order extending the Respondent's time to purchase the Petitioner's shares pursuant to BCL § 1118.

Zaretsky v. Maxi-Aids, Inc.

Petitioner is the former president of the Respondent corporation MAXI-AIDS, a company apparently formed by his father, and now operated by his father and brother. Petitioner claims he was wrongfully ousted as president, but more importantly, offers evidence that the Respondent corporation has engaged in inappropriate business practices which resulted in a successful lawsuit brought against it by a competitor with a judgment being entered against the defendant in a sum of \$2,779,806.96. He also offers proof that the United States Department of Veterans Administration issued an Order directing certain changes in MAXI-AIDS business contract practices in order to prevent debarment.

Petitioner contends that these are examples of the wrongful conduct by the officers and directors of the Respondent corporation, which supports involuntary dissolution.

Respondent opposes, and Elliot Zaretsky, Vice-President of the corporation, asserts denials to claims of wrongdoing. He also claims that Petitioner was fired for malfeasance and claims he has started a competing corporation. Respondent offers no documentary evidence to support its claims.

Respondent's application for an Order extending its time to purchase Petitioner's shares is Denied. Respondent has offered no proof to support its claim that Petitioner is not entitled to the relief sought, nor has it offered any proof to justify a further stay or extension of time. There is no evidence that the fair market value of Petitioner's stock cannot be valued or that a hearing is necessary to determine the value of same.

Petitioner's application is Granted to the following extent. A hearing is Ordered to determine whether involuntary dissolution of the corporation or appointment of a receiver is necessary. *Petraglia v. Whirlwind Music Distributors, Inc.*, 126 A.D.2d 948 (4th Dept. 1987); *Matter of Schwen*, 154 A.D.2d 601 (2nd Dept. 1989); *Matter of Brach*, 135 A.D.2d 711 (2nd Dept. 1987) app den. 73 N.Y.2d 701; *Burack v. I. Burack, Inc.*, 137 A.D.2d 523 (2nd Dept. 1988) app. dismissed 73 N.Y.2d 851. Petitioner's application for an Order pursuant to BCL §§ 1113, 1115 and directing disclosure is Granted. Respondent is directed to comply within 15 days of service of this Order.

The parties are directed to appear for a hearing pursuant to BCL § 1104-a on November 2, 2001 at 9:30 a.m.

It is, SO ORDERED.

Dated:

Oct 9, 2001

ENTERED

HON. GEOFFREY J. O'CONNELL, J.S.C.

OCT 16 2001

2

NASSAU COUNTY
COUNTY CLERK'S OFFICE