

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE
.....

ROSS M. CELLINO, JR.

Petitioner,

VERIFIED PETITION

-vs-

Index No. 2017-806178

CELLINO & BARNES, P.C. and
STEPHEN E. BARNES,

Respondents.
.....

The petitioner, ROSS M. CELLINO, JR., by his attorneys, CONNORS LLP and HODGSON RUSS LLP, alleges that:

1. Petitioner, ROSS M. CELLINO, JR. ("petitioner" or "Cellino"), is and was at all times relevant to this action, an attorney licensed to practice law in the State of New York and a resident of the County of Erie, New York.

2. Respondent, STEPHEN E. BARNES ("Barnes"), is and was at all times relevant to this action, an attorney licensed to practice law in the State of New York and a resident of the County of Erie, New York.

3. Respondent, CELLINO & BARNES, P.C. ("Cellino & Barnes," the "corporation" or the "firm"), is, and was at all times relevant to this action, a professional service corporation organized under the provisions of the New York Business Corporation Law.

4. Respondent Cellino & Barnes was organized as a professional service corporation to engage in the practice of law.

5. The Certificate of Incorporation of respondent Cellino & Barnes was filed by the Secretary of State on May 6, 1998. A copy of the Certificate is attached hereto as *Exhibit A*.

6. Respondent Cellino & Barnes currently maintains its principal office at 350 Main Street, 2500 Main Place Tower, Buffalo, New York 14202.

7. At the present time, Cellino & Barnes employs approximately 57 attorneys and has satellite offices throughout New York, including Rochester, Manhattan, Garden City and Melville (Long Island). Among all of its offices, the firm employs approximately 165 additional staff members.

8. Petitioner Cellino and respondent Barnes are currently equal 50% shareholders in respondent Cellino & Barnes pursuant to the "By Laws of Cellino & Barnes, P.C.," a copy of which are attached hereto as *Exhibit B*.

9. Petitioner Cellino and respondent Barnes each own an equal number of shares of capital stock of respondent Cellino & Barnes, which is the stock entitled to vote at an election of directors.

10. The directors of Cellino & Barnes are respondent and petitioner.

11. The officers of Cellino & Barnes are as follows: President, respondent Barnes; Vice President, petitioner Cellino, Secretary, petitioner Cellino; and Treasurer, respondent Barnes.

First Cause of Action- Dissolution

12. Petitioner Cellino repeats and realleges the allegations of paragraphs 1 through 11.

13. Petitioner Cellino is the owner of one-half of the outstanding shares of capital stock entitled to vote in an election of directors, and files this petition for a voluntary dissolution of respondent Cellino & Barnes on the grounds specified in Section 1104 of the Business Corporation Law.

14. Various differences of opinion have arisen between the petitioner Cellino and respondent Barnes in the conduct and management of the business affairs of the respondent corporation, Cellino & Barnes and its corporate affairs, with the result that the business and good will of the respondent corporation, Cellino & Barnes are in immediate danger of irreparable impairment.

15. As a result, respondent Cellino & Barnes has an even number of directors who are so divided respecting the management of its affairs such that the votes required for action by the board cannot be obtained.

16. Given that the shares of capital stock are equally divided between petitioner Cellino and respondent Barnes, the shareholders are so divided that the votes required for the election of directors cannot be obtained, and it is impossible to select a new board of directors.

17. There is internal dissention and the two equal shareholders are so divided that dissolution of the corporation would be beneficial to the shareholders.

18. The differences in opinion relate to matters fundamental to the operation of the corporation, including approaches to the practice of law, employment issues, compensation of employees, marketing, expansion, case management responsibilities and strategy. These differences in opinion are long-

standing, and have not been possible to resolve despite efforts by the shareholders and directors.

19. Specifically, over the last year petitioner Cellino and respondent Barnes have attempted, without success, to resolve the significant disputes over the practice of law matter and the following corporate management issues:

- a) procedures for handling contacts from clients already represented by other counsel;
- b) policies regarding disputes with clients' prior counsel over allocation of attorneys' fees and expenses;
- c) marketing and advertising decisions, including allocation of advertising resources between the firm's various offices, and advertising strategies;
- d) allocation of the corporation's time, expenses, resources and attention to the separate California law corporation Cellino & Barnes, L.C., of which respondent Barnes is the majority owner;
- e) further expansion and opening of additional offices;
- f) compensation of attorney employees;
- g) policies and practices as to attorney hiring, compensation and case assignments, including family and personal relationships;
- h) strategic decisions on intake and staffing of mass tort cases;
- i) the appropriate person or persons to manage the firm's cases, including deciding on settlement authority;

- j) the appropriate person or person to oversee the firm's hiring of attorneys;
- k) the appropriate person or person to oversee the supervision of attorneys;
- l) policies for screening potential case intake;
- m) the appropriate person or persons to oversee the management of the firm's non-legal business operations;
- n) the appropriate person or persons to manage the firm's various offices;
- o) election of the corporation's officers; and
- p) succession planning for the corporation.

20. Each of these corporate management issues is material and essential to the existence and continued functioning of the corporation.

21. On each of these issues, petitioner Cellino and respondent Barnes have taken essentially opposite positions, resulting in a deadlock among both the two board members, as well as the two equal shareholders.

22. Attempts by petitioner Cellino and respondent Barnes to resolve the deadlock have been unsuccessful.

23. As a result, the Board of Directors of respondent Cellino & Barnes has effectively ceased to function.

24. In view of the foregoing, judicial dissolution of respondent Cellino & Barnes under Business Corporation Law § 1104(a)(1) and (2) is appropriate.

25. Furthermore, the internal dissention between the two equal shareholders is hindering the proper management of the firm, causing increasing tension amongst the staff, and preventing both petitioner and respondent from practicing law in the manner they desire. Consequently, it would be beneficial to the shareholders, the employees of the firm and the firm's clients to dissolve the corporation.

26. In view of the foregoing, judicial dissolution of respondent Cellino & Barnes under Business Corporation Law §1104 (a)(3) is appropriate.

27. No prior application has been made for the relief requested herein.

Second Cause of Action-Request for Accounting

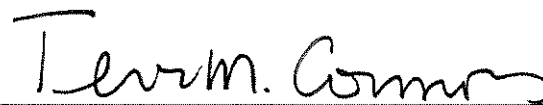
28. Petitioner Cellino repeats and realleges the allegations of paragraphs 1 through 27.

29. There are certain areas where an accounting will be necessary to appropriately update the assets and liabilities of Cellino & Barnes in order to ready it for dissolution.

30. Petitioner Cellino has an absolute right, both based in common law and Business Corporation Law Sections 624(b), to an accounting of the corporation.

WHEREFORE, petitioner, Ross M. Cellino, Jr., prays for an accounting of Cellino & Barnes, P.C., and a final order of this Court dissolving Cellino & Barnes, P.C. and for such other and further relief as may be proper, with the costs of this proceeding.

DATED: Buffalo, New York
May 10, 2017



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VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

ROSS M. CELLINO, JR., being duly sworn, deposes and says that he is the petitioner in the within action; that he has read the foregoing Petition and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein alleged upon information and belief, and as to those matters, he believes them to be true.



Ross M. Cellino, Jr.

Sworn to before me this
10th day of May, 2017.



Notary Public

VINCENT E. DOYLE III
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Feb. 12, 2018