

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D25435  
W/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 8, 2009

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
JOHN M. LEVENTHAL, JJ.

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2008-11622

DECISION & ORDER

In the Matter of Victor Weingarten, etc., petitioner-respondent, v Thirty-First Street Realty Corporation, et al., respondents, Fred Weingarten, appellant.

(Index No. 12584/07)

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Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, N.Y. (Edward J. Boyle and William J. Kelly of counsel), for appellant.

Chadbourne & Parke LLP, New York, N.Y. (Thomas J. Hall and Eric Twiste of counsel), for petitioner-respondent.

In a proceeding pursuant to Business Corporation Law § 1104-a for the judicial dissolution of a closely-held corporation, Fred Weingarten appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Kitzes, J.), entered October 28, 2008, as denied that branch of his motion, made jointly with the Estate of Jacob Popovic, which was pursuant to Business Corporation Law § 1118, inter alia, for leave to elect to purchase the shares representing the petitioner's minority interest in the corporation.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the circumstances presented here, the Supreme Court providently exercised its discretion in denying that branch of the motion of the appellant, Fred Weingarten, made jointly with the Estate of Jacob Popovic, which was pursuant to Business Corporation Law § 1118, inter alia, for leave to elect to purchase the shares representing the petitioner's minority interest in Thirty-First Street Realty Corporation (hereinafter the corporation), where the motion was made more than 90

December 15, 2009

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days after the date of the filing of the petition (*see* Business Corporation Law § 1118[a]; *see e.g.* *Matter of Vetco, Inc.* [*Wolk-Kornberg*], 260 AD2d 642).

SKELOS, J.P., FLORIO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court