

Matter of Mendelsohn v Khodadadian

2010 NY Slip Op 33278(U)

November 16, 2010

Supreme Court, Nassau County

Docket Number: 014460/10

Judge: Stephen A. Bucaria

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 2
NASSAU COUNTY

INDEX No. 014460/10

MOTION DATE: Sept. 10, 2010
Motion Sequence # 001

In the Matter of the Application of
STEVEN L. MENDELSON, M.D. and
SUSAN ZWANGER-MENDELSON, M.D.,
as holders of forty (40%) percent and twenty
(20%) percent of partnership interests,
respectively, in Zwanger & Pesiri Radiology
Group, LLP, a partnership in dissolution,

Petitioners,

For the Winding Up by the Court of the
Partnership Affairs of ZWANGER & PESIRI
RADIOLOGY GROUP, LLP, and for a
Judicial Accounting Between the Partners,
Pursuant to §§ 44 and 68 of the Partnership Law,

-and-

PARVIZ KHODADADIAN, M.D., as holder of the
remaining forty (40%) partnership interest in
Zwanger & Pesiri Radiology Group, LLP,

Respondent.

The following papers read on this motion:

Order to Show Cause.....	X
Affirmation in Support.....	X
Reply Affidavit/Affirmation.....	XXX
Memorandum of Law.....	X
Reply Memorandum of Law.....	X

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Petition for the winding up of the partnership affairs of Zwanger & Pesiri Radiology Group, LLP and for a judicial accounting is **granted** to the extent indicated below.

Petitioner Dr. Steven Mendelsohn is a radiologist and a 40% partner in respondent Zwanger & Pesiri Radiology Group, LLP ("ZPRG"). Petitioner Dr. Susan Zwanger-Mendelsohn, Dr. Mendelsohn's wife, holds a 20% interest in the partnership. Respondent Dr. Parvis Khodadadian holds the remaining 40% interest.

ZPRG has eight offices in Nassau and Suffolk and is one of the largest radiology practices on Long Island. The firm has state of the art diagnostic equipment at its various locations. It serves approximately 350,000 patients a year and has approximately 500 employees. Although ZPRG has operated as a New York registered limited liability partnership since July 1995, the partners do not have a written partnership agreement. Thus, all parties acknowledge that the relations of the partners *inter se* are governed by the Partnership Law.

According to petitioners, the parties are at an "irreconcilable impasse" as to the future operation of the partnership. Among the issues are the valuation of the practice and whether petitioners should buy out Dr. Khodadadian or whether the practice should be sold to a third party. Other issues include whether any provision should be made for the retirement of a partner and the apportionment of premiums on the partners' life insurance policies. On June 11, 2010, petitioners gave Dr. Khodadadian notice that they were dissolving the partnership.

On July 30, 2010, petitioners commenced this proceeding for a formal accounting pursuant to § 44 and judicial supervision of the winding up of the affairs of ZPRG pursuant to § 68 of the Partnership Law. Petitioners also move pursuant to Partnership Law § 75 for a preliminary injunction, restraining Dr. Khodadadian from negotiating with any third parties concerning disposition of partnership assets, disclosing "confidential or proprietary information," or soliciting ZPRG employees. Finally, petitioners move pursuant to CPLR § 602 to consolidate this petition with a separate action filed by petitioners, Index No 11383-10, concerning the "insurance disparity."

Dr. Khodadadian consents to judicial supervision of the winding up of ZPRG's affairs, an accounting, and consolidation of this proceeding with the insurance action. In connection with the judicial supervision of the winding up of ZPRG's affairs, respondent requests the court to appoint a business broker or investment banker with experience in the

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health care field to aid in the valuation of the partnership. Respondent also requests the court to implement “financial controls” during the winding up process and direct daily reporting to the partners. Among respondent’s requested controls is a provision that no action may be taken on behalf of the partnership without the unanimous consent of the partners.

Partnership Law § 68 provides that the partners who have not wrongfully dissolved the partnership have the right to wind up the affairs of the partnership, provided that any partner, upon cause shown, may obtain winding up by the court. Because of the dissension among the partners, the court determines that there is good cause for judicial supervision of the winding up of ZPRG.

Partnership Law § 44 provides that any partner shall have the right to a formal account as to partnership affairs when “circumstances render it just and reasonable.” A partner is entitled to an accounting upon dissolution of the partnership, (*Aaron v Aaron*, 2 AD3d 942 [3d Dept 2003]). Since ZPRG has been dissolved and all partners consent to an account, the court directs a judicial accounting of the affairs of the partnership. An accounting of the affairs of ZPRG shall be conducted on a date to be set by the court.

Partnership Law § 75 provides that in an action to dissolve a partnership, or for an accounting, the court may, in its discretion, authorize the partnership business to be continued during the pendency of the action by one or more partners, upon their executing an undertaking. The court may impose such other conditions as it deems proper (*Id.*). The court may also ascertain the value of the partnership property, and of the interests of the respective partners, by a reference or otherwise (*Id.*). The judgment in the dissolution or accounting proceeding may make provision for payment to retiring partners, as justice requires, with or without the appointment of a receiver, or a sale of the partnership property (*Id.*). In directing an accounting and supervising the winding up of a dissolved partnership pursuant to Partnership Law § 75, the court is vested with considerable discretion.

While the court has considerable discretion in winding up the affairs of a partnership, its discretion is not unfettered. Thus, the court declines to restrain Dr. Khodadadian from negotiating with third parties concerning disposition of partnership assets. If the assets are to be sold to a third party, maximizing the amount realized is in the interests of all of the partners. The court notes in this regard that the buildings in which four of ZPRG’s offices are located are owned not by ZPRG but by separate entities. Although the four real estate companies are owned by the parties in the same percentages as their interests in ZPRG, those

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companies are not before the court.

The court further declines to restrain Dr. Khodadadian from soliciting ZPRG employees. Since there is no written partnership agreement, there is no provision prohibiting Dr. Khodadadian from leaving the practice and competing with ZPRG.

Petitioners offer no evidence that Dr. Khodadadian has disclosed any protected health information in the course of negotiating to sell partnership assets or his interest in partnership property. Nor have petitioners shown the type of "proprietary information" which respondent may have disclosed to potential purchasers. The court notes that it would not appear to be in respondent's interest to disclose such information to third parties. Petitioner's application for preliminary injunctive relief pursuant to Partnership Law § 75 is **denied**.

The court is unable to grant Dr. Khodadadian any relief since he has not made a cross motion (*Blam v Netcher*, 17 AD3d 495 [2d Dept 2005]). Moreover, the court will not, at this time, impose the financial controls which respondent is seeking because to do so would be tantamount to making a partnership agreement for the parties. Nor will the court appoint a referee to report as to the value of the partnership property without providing petitioners the opportunity to be heard as to the need for such relief, including the referee's qualifications.

As the parties recognize, the issues raised by the insurance premium action are encompassed within the accounting proceeding. Accordingly, petitioner's motion to consolidate Index No. 11383-10 with the present proceeding is **granted** to the extent that the two cases shall proceed jointly.

A Preliminary Conference has been scheduled for January 27, 2011 at 9:30 a.m. in Chambers of the undersigned. Please be advised that counsel appearing for the Preliminary Conference **shall** be fully versed in the factual background and their client's schedule for the purpose of setting **firm** deposition dates.

So ordered.

Dated NOV 16 2010


ENTERED

NOV 22 2010

NASSAU COUNTY
COUNTY CLERK'S OFFICE