SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SALIANN SCARPULLA** **PART 39**
Justice

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LOUIS GOLDER,

Plaintiff,

- v -

29 WEST 27TH STREET ASSOCIATES, LLC, TAUBER FAMILY IRREVOCABLE TRUST DATED DECEMBER 10, 2012, AVIVA BIELORY, LARRY TAUBER

Defendant.

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INDEX NO. 652371/2016

MOTION DATE 12/18/2017

MOTION SEQ. NO. 004

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this application to/for Confirm/Disapprove Award/Report.

Upon the foregoing documents, it is

Petitioner Louis Golder, as Administrator of the Estate of Robert Golder ("Golder"), requests this Court to confirm the report of the special referee on the issue of the 29 West 27th Street Associates, LLC's (the "LLC") term. Respondents 29 West 27th Street Associates, LLC, Tauber Family Irrevocable Trust Dated December 10, 2012, Aviva Bielory and Larry Tauber ("Tauber") (collectively, "Respondents") oppose this motion and request the Court to reject the special referee's report.

In an order dated July 17, 2017, I referred this matter to a special referee to hear and report on the issue of whether the LLC's members entered into an operating agreement in which they agreed that the Company's term would end on December 31, 2011, or would have perpetual duration. The hearing was held on November 28, 2017, in front of the Honorable Ira Gammerman, Judicial Hearing Officer (the "Referee"). On that same date, the Referee confirmed the hearing by referring to the record (the "Referee Report").

The hearing transcript shows that the Referee examined the Partnership Agreement, Operating Agreement and an August 14, 2003 letter from Tauber to Golder (the "August letter"). Upon review of these documents, the Referee recommended that "the initial partnership agreement applies and that the operating agreement didn't modify it." The Referee further found that: 1) the Operating Agreement was not signed by Golder; 2) the August letter did not constitute Golder's agreement to the terms of the operating agreement; and 3) based on the documents reviewed, no testimony was required for him to reach a decision.

CPLR § 4403 states that upon the motion of any party or upon the judge's initiative, the judge "may confirm or reject, in whole or in part, the verdict of an advisory jury or the report of a referee to report." Notably, a "special referee's findings of fact and credibility will generally not be disturbed where substantially supported by the record." *Flanagan & Cooke v. RC 27th Ave. Realty Corp.*, 305 A.D.2d 135, 135 (1st Dept. 2003).

Respondents contend that the Referee's report was deficient and incomplete and must be rejected.[1] The fact that the Referee Report consists of one page stating that the

[1] Respondents also argue that the Referee should have permitted their witnesses – the attorney who drafted the Operating Agreement and the accountant that works on the

report was issued on the record, however, does not render the report insufficient. *See John Hancock Mut. Life Ins. Co. v. 491-499 Seventh Ave. Associates*, 169 Misc.2d 493, 498-499 (NY Sup. Ct. 1996) (rejecting defendant's argument "that a separate document labeled 'report' must be filed where the report is contained in the transcript of the hearing [because that] argument exalts form over substance.")

Because the Referee examined relevant information, I find that the Referee's report and recommendation that the initial partnership agreement controls as to the duration of the partnership is substantially supported by the record. Accordingly, the Referee Report is confirmed in its entirety.

Having confirmed the Referee Report, I turn to Golder's petition for dissolution.[2] Golder seeks to dissolve the LLC which owns a multiple dwelling building located at 29 West 27th Street. According to the New York Department of State, the LLC's Articles of Incorporation were filed on August 15, 2003.

Pursuant to the Partnership Agreement, the partnership interests were divided as follows: Robert Golder held a 45% interest (now represented by Louis Golder as administrator of his estate); Joshua Tauber held a 40% interest (now transferred to Family Irrevocable Trust dated December 10, 2012); and Eliezor Bielory held a 15% interest

LLC's tax returns – to testify at the hearing. However, the Referee deemed such testimony unnecessary because Golder never signed the Operating Agreement and the proffered testimony would not change that fact, which was central to his decision.

[2] In my July 17, 2017 decision, I ordered that "upon receipt of the Special Referee's report, I will issue a final decision on the petition for dissolution."

(now transferred to Aviva Bielory as Trustee of the Eliezor Bielory Residuary Trust Agreement).

Under New York Limited Liability Company Law ("LLC Law") §701(a), a "limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following: (1) the latest date on which the limited liability company is to dissolve, if any, provided in the articles of organization, or the time specified in the operating agreement."

Here, as found by the Referee, the partnership expiration date controls, namely December 31, 2011. Therefore, as the expiration date has passed, dissolution is appropriate at this time and I grant Petitioner's dissolution petition.

In accordance with the foregoing, it is hereby

ORDERED that Petitioner Louis Golder's request to confirm the Referee Report is granted; and it is further

ADJUDGED that Petitioner Louis Golder's petition for the dissolution of 29 West 27th Street Associates, LLC is granted; and it is further

ADJUDGED that Respondents 29 West 27th Street Associates, LLC, Tauber Family Irrevocable Trust Dated December 10, 2012, Aviva Bielory and Larry Tauber are directed to expeditiously take all necessary steps to dissolve and wind down the LLC pursuant to the terms of the Partnership Agreement; and it is further

ORDERED that Articles of Dissolution shall be filed with the Department of State within 90 days following this dissolution.

This constitutes the decision, order and judgment of the Court.

6/7/2018
DATE

SALIANN SCARPULLA, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION	
	X	GRANTED	DENIED		GRANTED IN PART	OTHER
APPLICATION:	X	SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		DO NOT POST			FIDUCIARY APPOINTMENT	REFERENCE