

176 W. 87th Leasehold LLC v Rudd
2025 NY Slip Op 34309(U)
November 10, 2025
Supreme Court, New York County
Docket Number: Index No. 653491/2025
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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176 WEST 87TH LEASEHOLD LLC, KIM GREENBERG,
KIM GREENBERG, KIM GREENBERG

Plaintiff,

- v -

MARK S RUDD, RICHARD KLEIN,

Defendant.

INDEX NO. 653491/2025

MOTION DATE 06/09/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17, 18, 19, 20, 23, 24

were read on this motion to/for DISSOLUTION.

Upon the foregoing documents, the petition for dissolution pursuant to Limited Liability Company Law § 702 is GRANTED to the extent set forth below.

The sole issue in this Petition is whether the Petitioner is entitled to have a Court appointed receiver do an accounting as part of the wind-up of 176 West 87th Leasehold LLC (the **LLC**) and whether the Petitioner is entitled to legal fees. As discussed below, they are not entitled to legal fees but they are entitled to an accounting.

This case involves the LLC, a New York limited liability company, which had three original members (collectively, the **Members**): Fredrick J. Rudd (owner of 35.833% of the LLC), Mark S. Rudd (owner of 35.833% of the LLC), and Richard Klein (owner of 28.334% of the LLC).

On June 19, 2024, Frederick J. Rudd passed away. Pursuant to the Order Granting Preliminary Letters Testamentary (NYSCEF Doc. No. 5), dated October 18, 2024, the court appointed Kim Greenberg, Frederick J. Rudd's widow, as the executor of his estate. Accordingly, Kim Greenberg represents Fredrick J. Rudd's interest in this action. The LLC's sole asset is a lease dated July 28, 1983, between 176 West 87th Street Owners Corp., as lessor, and 176 West 87th Street Equities Group (predecessor-in-interest to 176 West 87th Leasehold LLC), as lessee, for the property located at 176 West 87th Street, New York (the **Lease**).

Reference is made to the LLC's Operating Agreement (the **Operating Agreement**; NYSCEF Doc. No. 4), dated July 1, 2016, by and between Frederick J. Rudd, Mark S. Rudd, and Richard Klein. Section 5 of the Operating Agreement provides that decisions by the LLC may only be made by unanimous consent of the Members:

5. Management; Powers. The business and affairs of the Company shall be managed by the Members and decisions and actions by the Company may only be made by the unanimous prior consent of all of the Members. The Members, in their capacities as "Members" or "Managers" of the Company, jointly or individually, shall have the right, in the name of the Company, to do all such acts as may be advisable or appropriate, in the judgment of such Member(s), to carry on the activities of the Company and to further the purpose of the Company.

(NYSCEF Doc. No. 4 § 5).

The Petitioner alleges that Mark S. Rudd and Richard Klein have been using the LLC's assets to pay for their families' health insurance and directed the LLC to make an \$150,000.00 payment to Creative Industries—both without the consent of the Petitioner (NYSCEF Doc. No. 1 ¶¶ 18-19). Additionally, it is undisputed that the Members are unable to effectively communicate with each other or reach an agreement regarding whether, and how, to sell the lease.

The Petitioner commenced this instant action with the filing of a Verified Petition for Judicial Dissolution on June 9, 2025 (the **Petition**; NYSCEF Doc. No. 1) seeking (i) Respondents to render a full and complete accounting to Petitioners of all income and expenses of the LLC, (ii) dissolution of the LLC pursuant to Limited Liability Company Law § 702, (iii) the sale of the Lease, (iv) the appointment of a receiver, and (v) reasonable attorneys' fees to Petitioner for this proceeding.

The Petitioner's request for dissolution of the LLC, sale of the Lease, and the appointment of a receiver are unopposed. However, Respondent Richard Klein opposes the Petitioner's request for the Respondent to provide the Petitioner with an accounting and attorneys' fees.

In a petition seeking dissolution pursuant to Limited Liability Company Law § 702, the petitioning member must establish, in the context of the terms of the operating agreement or articles of incorporation, (i) the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved or (ii) continuing the entity is financially unfeasible (*In re 1545 Ocean Ave., LLC*, 72 AD3d 121, 131 [2d Dept 2010]).

As discussed above, the Operating Agreement requires unanimous consent to make decisions on behalf of the LLC. The Members are unable to effectively communicate with each other.

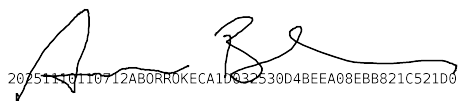
Indeed, the Members are unable to properly discuss whether or not to sell the Lease, which is the LLC's sole asset. Mark S. Rudd and Richard Klein are also allegedly taking the LLC's funds for their own personal use without the consent of all of the Members. Thus, the management of the

entity is unwilling to reasonably permit the stated purpose of the entity to be achieved, dissolution of the LLC is proper, appointment of a receiver is appropriate and an accounting is warranted. Because the Operating Agreement does not provide for the shifting of attorneys' fees, the request for this relief is however denied.

Accordingly, it is hereby

ORDERED, ADJUDGED, and DECLARED that the Petition is GRANTED to the extent set forth above; and it is further

ORDERED that the Petitioner shall submit judgment including for the appointment of Joshua Stein as receiver.¹

<u>11/10/2025</u>			
DATE		ANDREW BORROK, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

¹ The parties submitted proposed receivers and the Court indicated that the appointment of Joshua Stein was appropriate.