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| Advanced 23, LLC v Chambers House Partners, LLC |
| 2019 NY Slip Op 30173(U) |
| January 22, 2019 |
| Supreme Court, New York County |
| Docket Number: 650025/2016 |
| Judge: Saliann Scarpulla |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION

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ADVANCED 23, LLC, DAVID SHUSTERMAN,
Petitioners,

INDEX NO. 650025/2016

- v -

MOTION DATE N/A

CHAMBERS HOUSE PARTNERS, LLC, ANITA MARGRILL,
HERBERT MARGRILL

MOTION SEQ. NO. 007

Respondents.

DECISION AND ORDER

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HON. SALIANN SCARPULLA:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

In this special proceeding for dissolution, petitioners Advanced 23, LLC and David Shusterman (collectively, “Shusterman”) move to confirm in part, reject in part the report of the special referee dated October 5, 2018 (the “Report”) and, upon such modification, dissolve the respondent Chambers House Partners (“CHP”). Respondents cross-move to confirm the Report, in addition to cross-moving for summary judgment to dismiss the petition and to grant respondents’ second counterclaim.

CHP owns real property located at 154 Chambers Street, New York, NY (“Building”), and Shusterman and respondents Anita and Herbert Margrill (“Margrills”) occupy the Building and own CHP. Shusterman petitioned, pursuant to NY Limited Liability Company Law § 702, for judicial dissolution and for a court order directing that

the Building be sold, and that CHP be liquidated. In an interim order dated December 15, 2017 (“Interim Order”), I referred to a special referee to hear and report on the issue of whether Shusterman breached his duties and obligations under CHP’s “Operating Agreement” to force dissolution. After a three-day hearing, Special Referee Deborah E. Edelman (“Referee Edelman”) reported and recommended that Shusterman breached the Operating Agreement to attempt a forced dissolution of CHP. Referee Edelman further recommended that I confirm the Report upon a motion made pursuant to CPLR § 4403.

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.” The recommendations and report of a referee will be confirmed “whenever the findings are substantially supported by the record, and the Referee has clearly defined the issues and resolved matters of credibility.” *Stone v Stone*, 229 A.D.2d 388 (2d Dep’t 1996). Here, Shusterman argues that I should reject the Report in part because it is beyond the scope of the issue referred.

However, review of the Report indicates that Referee Edelman’s determination was properly within the scope of reference and that the record amply supports the Report. The Interim Order referred issues regarding Shusterman’s alleged breach of the Operating Agreement *vis-à-vis* managerial meetings, among other purported breaches. Although Referee Edelman determined Shusterman’s failure to meet was not “done, generally, to force dissolution . . . [t]he specific meetings, or attempts at meetings, regarding the mortgage are an important exception.” In that instance, Referee Edelman

found that Shusterman breached various duties and obligations of the Operating Agreement, including section 4.1(d), in order “to push the Margrills out of the Building . . . [and] to attempt to force dissolution of [CHP].” That recommendation was largely based on Referee Edelman’s credibility determinations among the respective parties’ testimony in addition to testimony from non-party Maurice Reichman.

As the Report is substantially supported by the record, I confirm the Report in its entirety and deny Shusterman’s request for dissolution of CHP.

As for respondents’ cross-motion for summary judgment on its second counterclaim, which seeks indemnification for the Margrill’s expenses to enforce Shusterman’s obligations, I dismiss the second counterclaim without prejudice. Respondents may instead pursue that claim in a plenary action, in addition to any other relief respondents seek regarding Shusterman’s removal as CHP’s manager.

In accordance with the foregoing, it is

ORDERED that petitioners Advanced 23, LLC’s and David Shusterman’s motion to confirm in part, reject in part is denied;

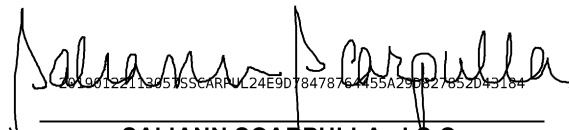
ORDERED that respondents Chambers House Partners, LLC’s, Anita Margrill’s, and Herbert Margrill’s cross-motion to confirm is granted;

ORDERED that respondents Chambers House Partners, LLC’s, Anita Margrill’s, and Herbert Margrill’s cross-motion for summary judgment is granted only to the extent of dismissing the petition, and the motion is otherwise denied;

ORDERED that the petition is dismissed in its entirety, the counterclaims are dismissed without prejudice, and the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

1/22/19
DATE


SALIANN SCARPULLA, J.S.C.

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| 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"/> |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | SUBMIT ORDER | <input type="checkbox"/> |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
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| | | | | | REFERENCE |