

BUSINESS AND FRANCHISE LAW REPORT

FOR ADDITIONAL INFORMATION CONTACT:

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RE: New Jersey Order Show Cause - Non-Controlling Shareholder Oppression

To provide you with a better understanding of what an Order to Show Cause looks like and how injunctive relief comes into play, I have included a redacted version of actual Orders to Show Cause that I have filed in the course of litigation. Please keep in mind that an Order to Show Cause is not a generic document and that the content of your Order to Show Cause (if one is required) must be prepared by your attorney and must be specific to the facts of your case and the relief appropriate for your case.

In the exhibited example, I have redacted all client and business information. I have further revised the exhibited examples to remove specific injunctive relief that could be used to identify the business of my client or my client's identification. So, please understand that the sample documents are not provided to you in their complete form. Do not use or copy these documents and always refer to your attorney for the preparation of legal documents. Not every application for injunctive relief is successful, but, if properly structured and planned, even an unsuccessful Order to Show Cause may present numerous benefits to your case.

After you review the example, consider the following questions for your attorney:

1. Whether or not injunctive relief is an option for your case?
2. What types of injunctive relief would benefit your business?
3. What types of injunctive relief would benefit your personal interests?
4. What is the likelihood of successfully obtaining an injunction?
5. What is the best course of action for obtaining an injunction?
6. Can you benefit from the Order to Show Cause even if a court denies your application for injunctive relief?

Example:

New Jersey Order to Show Cause: Non-Controlling Shareholder Oppression. This redacted Order to Show Cause was filed in New Jersey State Court. The nature and basis for relief related to acts of minority shareholder oppression where a non-controlling LLC member with an approximate thirty (30%) percent equity interest was locked out of his or her duties and role at the company. The injunctive relief sought in this Order to Show Cause was focused on preserving the rights of the non-controlling shareholder, including his or her right to inspect books and records and to access the corporate office. This application also sought the appointment of a judicial receiver and an injunction to prevent the controlling shareholders from diverting corporate funds and assets.

Charles N. Internicola, Esq.

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Attorney for Plaintiff

[Plaintiffs]

SUPERIOR COURT OF NEW JERSEY

Plaintiffs,

_____ COUNTY

CIVIL ACTION

v.

CHANCERY DIVISION

[Defendants]

Defendants,

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS

(NO *EX PARTE* RELIEF REQUESTED)

THIS MATTER having been opened to the court on application of Plaintiffs [PLAINTIFF NAME], as holder of Thirty Percent of the Membership Units of [LLC NAME] and [PLAINTIFF NAME] (hereinafter collectively referred to as "Plaintiffs"), for injunctive relief pursuant to R. 4:52-1 based upon the facts set forth in the Verified Complaint and the legal argument set forth in the supporting Memorandum of Law, and the Court having considered these papers and determined that this matter may be commenced by Order to Show Cause pursuant to R. 4:52-1 and for GOOD CAUSE shown,

IT IS on this _____ day of _____, 2011

ORDERED that Defendants [DEFENDANT NAMES] (hereinafter collectively referred to as “Defendants”) shall appear before the Honorable _____, at the Superior Court of New Jersey, Chancery Division, _____ County, at the _____ Justice Center, _____ New Jersey at _____ am / pm or as soon thereafter as counsel may be heard, on the _____ day of _____, 20__ to show cause why an Order should not be issued that:

- a. [PLAINTIFF] be reinstated in his position as Chief Financial Officer and a Managing Member of [LLC];
- b. [PLAINTIFF] be paid his salary due and owing from August, 2011 to present;
- c. [PLAINTIFF] be given full and unfettered access to [LLC]’s facilities and operations;
- d. [PLAINTIFF] be paid its due and owing distributions, as customarily distributed by [LLC] in the ordinary course of business, for the period of August, 2011 to present;
- e. Defendants’ be enjoined and restrained from interfering with [PLAINTIFF]’s full and unfettered access to the business, operations and accounts of [LLC], including but not limited to, client files and records, billing records and invoices, collection records, account statements, computer records, computer hardware, computer software, telephone numbers and/or lines, email accounts, website(s) and servers of [LLC];
- f. A custodial receiver and/or fiscal agent be appointed to oversee [LLC]’s: (i) bank accounts, including receipts to and distributions by [LLC]; (ii) client files and records, (iii) day-to-day business operations, (iv) website(s) and mail accounts and (v) to conduct an accounting of [LLC]’s books and records from September, 2007 to present;
- g. Defendants be enjoined and restrained from utilizing any funds of [LLC] except those necessary for the day-to-day operations of [LLC] in connection with the appointment of the custodial receiver and/or fiscal agent, the prosecution of the claims set forth in this lawsuit, and other fees and expenses as directed or appointed by the Court appointed custodial receiver and/or fiscal agent;
- h. Defendants’ be enjoined and restrained from withdrawing any funds from any account owned and/or maintained by [LLC], or maintained on behalf of [LLC], without the written consent of [PLAINTIFF] and/or the Court appointed custodial receiver and/or fiscal agent; and
- i. Defendants’ be enjoined and restrained from removing files, computers, monies or assets from the office(s) and/or bank accounts of [LLC].

FURTHER ORDERED that pending the hearing of this application:

- a. [PLAINTIFF] be reinstated in his position as Chief Financial Officer and a Managing Member of [LLC];
- b. [PLAINTIFF] be paid his salary due and owing from August, 2011 to present;
- c. [PLAINTIFF] be given full and unfettered access to [LLC]'s facilities and operations;
- d. [PLAINTIFF] be paid its due and owing distributions, as customarily distributed by [LLC] in the ordinary course of business, for the period of August, 2011 to present;
- e. Defendants' be enjoined and restrained from interfering with [PLAINTIFF]'s full and unfettered access to the business, operations and accounts of [LLC], including but not limited to, client files and records, billing records and invoices, collection records, account statements, computer records, computer hardware, computer software, telephone numbers and/or lines, email accounts, website(s) and servers of [LLC];
- f. A custodial receiver and/or fiscal agent be appointed to oversee [LLC]'s: (i) bank accounts, including receipts to and distributions by [LLC]; (ii) client files and records, (iii) day-to-day business operations, (iv) website(s) and mail accounts and (v) to conduct an accounting of [LLC]'s books and records from September, 2007 to present;
- g. Defendants be enjoined and restrained from utilizing any funds of [LLC] except those necessary for the day-to-day operations of [LLC] in connection with the appointment of the custodial receiver and/or fiscal agent, the prosecution of the claims set forth in this lawsuit, and other fees and expenses as directed or appointed by the Court appointed custodial receiver and/or fiscal agent;
- h. Defendants' be enjoined and restrained from withdrawing any funds from any account owned and/or maintained by [LLC], or maintained on behalf of [LLC], without the written consent of [PLAINTIFF] and/or the Court appointed custodial receiver and/or fiscal agent; and
- i. Defendants' be enjoined and restrained from removing files, computers, monies or assets from the office(s) and/or bank accounts of [LLC].

FURTHER ORDERED that Defendants may file and serve any opposition papers to Plaintiffs' application by _____ 20__, and Plaintiffs shall file and serve reply papers by _____ 20__; and it is

FURTHER ORDERED that Defendants have the right to seek dissolution or modification of these restraints on two (2) days' notice; and it is

FURTHER ORDERED that a copy of this Order and all supporting papers, together with a copy of the Verified Complaint, be served upon Defendants or their representatives within _____ days

of the date hereof, as set forth herein, and in accordance with R. 4:4-3 and R. 4:4-4, this being original process; and it is

FURTHER ORDERED that Proof of Service upon Defendants be filed with the Court no later than three (3) days before the return date, as set forth above, and it is

FURTHER ORDERED that Defendants file and serve upon the attorney for Plaintiffs an Answer to the Verified Complaint together with a check for \$35.00 made payable to “Treasurer, State of New Jersey” within 35 days after service of the within Order and Verified Complaint upon Defendants, exclusive of the date of service. If Defendants fail to answer, judgment by default may be rendered against Defendants for the relief demanded in the Verified Complaint. Defendants shall file its Answer and Proof of Service thereof with the Clerk of the Superior Court of New Jersey, Chancery Division, ____ County at the ____ Justice Center, _____, New Jersey, in accordance with the Rules governing the Court of the State of New Jersey.

[JUDGES NAME]

Honorable

LEARN MORE

To learn more about a proven course of action and plan to protect and defend your interests as a New York or New Jersey partner, shareholder or member, contact [Partnership and Shareholder Lawyer, Charles N. Internicola, Esq.](#) at **800. 976. 4904**

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By New York and New Jersey Partnership and Shareholder Lawyer
Charles N. Internicola, Esq.

- [Factors to Consider when Faced with a Partner or Shareholder Dispute](#)
- [Minority Shareholder Rights: New Jersey’s Oppressed Shareholder Laws](#)
- [New Jersey Limited Liability Companies: Dissociation of a Member](#)