

**IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT**

In Re Estate of Leslie Mandelstein, Deceased

BARBARA MANDELSTEIN, as Independent
Executor of the ESTATE OF LESLIE
MANDELSTEIN, Deceased,

Plaintiff/Appellant,

v.

LESTER MANDELSTEIN and CUSTOM
PLANNING, LLC,

Defendants/Appellees.

Appeal from the Circuit Court of
the 19th Judicial Circuit

Circuit Court Number No. 14 P 899

Judge Joanne Vorderstrasse

Notice of Appeal: December 14,
2017

Date of Judgment: November 15,
2017

**BRIEF OF PLAINTIFF/APPELLANT
BARBARA MANDELSTEIN, as Independent Executor of the ESTATE
OF LESLIE MANDELSTEIN, Deceased**

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE CASE

Lester Mandelstein (“Lester”) and Leslie Mandelstein (“Leslie”), both now deceased, were equal members of a successful financial planning business with nearly \$20,000,000 in assets under management, Custom Planning Group, LLC (“CPG”) and two sole proprietorships operating under the same roof with shared expenses. Leslie died on August 31, 2014 and Lester continued with the three businesses and eventually sold all three, without making any distribution to Leslie’s Estate, instead giving the proceeds to Linda Rukin (“Rukin”).

Sadly, as was made clear at trial, rather than distributing Leslie’s share of the business to Leslie’s widow, Barbara Mandelstein (“Barbara”), immediately following Leslie’s death, Lester greedily attempted to move all the clients to himself from both Leslie’s sole proprietorship and Leslie’s clients in CPG. Lester literally hid client files and physically locked Barbara out of the office when Leslie became gravely ill in order to achieve the transition of Leslie’s clients to Lester.

Mere months later, after finagling CPG’s and Leslie’s accounts, Lester sold “his” clients to Moonstone Asset Management (“Moonstone”) for cash and future consideration including, apparently, lucrative employment for his dependent daughter Rukin who also continues to receive 50% of commissions on the accounts transferred to Moonstone through Lester’s Trust. Further, Lester concealed his negotiations and eventual sale to Moonstone from Leslie’s Estate. As a result of Lester’s treachery, Leslie’s wife and daughter were left

with nothing from Leslie's business while Lester and Rukin took the full benefit. In her further retaliation against Barbara for an apparent slight decades earlier, Rukin went so far as to omit any mention of Barbara or her and Leslie's daughter, Michelle Mandelstein ("Michelle"), from Lester's obituary that was widely viewed by their community of friends and family unnecessarily causing great embarrassment and public airing of the family dispute.

Even more unfortunate is the fact that within days of Leslie's death, Lester offered Barbara \$200,000 to purchase Leslie's share of the business (including both Leslie's sole proprietorship and his share of CPG) and Barbara accepted. Had Lester kept his word the family could have prevented all of this litigation and strife. Sadder still, after Lester reneged on this offer he never again offered more than \$15,000 to settle this case.

JURISDICTION

This is an appeal from a final order of the Circuit Court of the Nineteen Judicial Circuit that resolved all claims brought by each of the parties, and is, therefore, appealable under Illinois Supreme Court Rule 301. (A. 1, C. 896).

ISSUES PRESENTED FOR REVIEW

1. Whether the Circuit Court erroneously denied a motion for leave to file a jury demand over a year before trial to correct the inadvertence of terminated predecessor counsel.

2. Whether a limited liability company member owes fiduciary duties to the estate of a deceased member from the time of the member's death to the time of distribution or transfer pursuant to 805 ILCS 180/35-60.

3. Whether the Circuit Court erred in refusing to award attorneys' fees pursuant to 805 ILCS 180/35-65 where the litigation was preceded by an offer to purchase the decedent's share of the business which was vexatiously revoked thus necessitating Plaintiff incur over \$200,000 in attorneys' fees through trial.

4. Whether the Circuit Court erroneously held "This case is about CPG only, nothing has been pled regarding Leslie's Sole Proprietorship" where an issue was made of it in the pleadings and the Court allowed testimony relevant only to the value of Leslie's sole proprietorship without objection.

STATEMENT OF FACTS

The facts of this case are simple and disheartening. Lester and Leslie operated a profitable business together as partners and when Leslie died Lester prevented Leslie's family from sharing in the benefit in favor of Lester's daughter Rukin.

- a. Lester believed Leslie's ownership interest Leslie's sole proprietorship and one half of CPG was worth \$200,000 and offered \$200,000 as a buyout shortly after Leslie's death.**

Shortly after Leslie's death, Lester offered \$200,000 to purchase Leslie's share of CPG inclusive of Leslie's sole proprietorship. (R. 42, 40-41). CPG client Sheila Schwab ("Sheila") testified as follows:

Q: At any time did [Lester] indicate in any way what he believed the value of Leslie's share of the business was?

A. \$200,000.

Q. What makes you say that?

A. Because he was going to send her a check. Barbara said: When would I expect the check? He said, well, I'm, you know, I have to collect the money. Then Barbara said: By the end of the month? And he said yes.

Q. So how much was going to be paid by the end of the month?

A. \$200,000.

Q. So what was Lester paying the \$200,000 for?

A. Leslie's share of the business... because Leslie passed away.

(R. 42, 40-41).

Barbara testified regarding Lester's \$200,000 offer as follows:

Q. Did you accept the offer of \$200,000?

A. I did accept it --

Q. Did he promise to pay the \$200,000 at a later date?

A. Yes. He said he would get papers drawn up for sale that I would sign, and he would get me the check.

Q. What was this \$200,000 supposed to be for?

A. For Leslie's share of the business.

Q. What business?

A. The Custom Planning Group LLC.

(R. 112, 110:3-17)

Lester did not refute Barbara and Sheila's account of the offer in his testimony. Instead, Lester's testimony actually supports Sheila's independent account of the offer of \$200,000. Lester admitted having a discussion with Barbara regarding offering her money to buy out Leslie's portion of CPG and that the amount of money he discussed with Barbara as a buyout was based on an offer he received to purchase the consolidated business (the "Paulson Offer"). (R. 364, 361:1-13).

Barbara testified in specific detail regarding her first meeting with Lester to discuss buying out Leslie's Estate's interest in CPG and Leslie's sole proprietorship. Barbara testified that Lester first discussed buying out Leslie's share of the business days after his death, testifying:

[M]y understanding was the business was being marketed for...\$600,000, and my husband's share would be \$300,000. So, he said, well, you know, I don't know, and I said: **Why don't you just make me an offer? Then he said: I'll give you \$200,000.** I took a beat and I thought, well, that's a third less, and then I remembered who I was dealing with, and I thought he'll fight me tooth and nail if I don't give him what he wants. I'm having enough trouble getting up in the morning, and I'm not going to do this to myself. So, I said: **Fine. Have your attorney draw something up and I'll sign it and bring me a certified check.** Then he said, well, I'll have to find the money. And I said: Fine. How long do you think that will take? A week? Two weeks?

(R. 107, 105:16-106:14)

There was no testimony or evidence presented at trial contradicting the fact that Lester offered \$200,000 and the Circuit Court found the offer was in fact communicated. (A-13, C. 908).

b. Despite offering \$200,000 for Leslie's share of the business, Lester did not pay due to his and Rukin's resentment for Barbara.

Rukin made no attempt to hide her contempt for Barbara and was still seething with anger at trial, testifying as follows:

Q. When did your resentment of Barbara begin?

A. **Why don't you ask her?** [instruction from Court]

A. Probably shortly after my mom died.

Q. That was in about 1997?

A. '96.

....

Q. Do you have hard feelings towards Barbara?

A. Yes.

Q. Isn't it true that the only thing that Barbara has done to you in the last five years to cause you any emotional harm was not letting you have anything to do with Leslie outside of work?

A. Yes.

Q. Isn't it true that the root cause of your hard feelings with Barbara was Leslie not attending family events?

A. Yes.

Q. And as of December 2014 did you have a resentment for Barbara?

A. Yes.

Q. Isn't it true that the only reason for your ill feelings is Barbara keeping her husband from you?

A. Yes.

Q. Is it fair to say that you have the same feelings for Barbara from approximately the year 2000 through the time of your father's death?

A. Around that time, yes.

Q. Did you tell Lester about your feelings for Barbara?

A. Yes.

Q. Is it something that you communicated with Lester about multiple times?

A. Frequently.

(R. 423, 419:4-24).

Oddly, Rukin testified the root of this resentment was Barbara keeping Leslie from her but she admitted she saw Leslie daily. (R. 431, 427:7-12).

A CPG client and longtime family friend of all parties, Stuart Schwab, observed the family dynamic as follows:

From my personal experience, there was conflict within the family between Barbara and Lester that has some significant historical background, and Lester did things that made it difficult for Barbara to inherit the parts of the business, that is the money, that Leslie should have -- that Leslie was in control of, that Leslie was involved with, and did so in ways that are strange to me, especially as an engineer, so that at this point we're in court. daughter-in-law, **to have created an environment in which upon his son's death she could not smoothly inherit the money that was part of the firm is nothing but vindictive.**

(R. 244, 241:11-242:4)(emphasis added).

CPG client Leanne Strepina observed there was no love lost between Barbara and Lester and Rukin and she was not surprised to learn the family relationship devolved into litigation. (R. 325, 323:6-14). In fact, she thought the behavior exhibited by Rukin in this lawsuit was consistent with Rukin and Barbara's relationship prior to Leslie's death. *Id.*

Barbara testified her relationship with Rukin began to deteriorate shortly after Rukin's husband died and has progressively worsened due to Rukin's apparent jealousy of Barbara's relationship with her living husband. (R. 73, 72:2-19). Rukin's apparent hatred of Barbara and Michelle culminated

when Lester died and both Barbara and Michelle were conspicuously omitted from the obituary Rukin published in the Chicago Tribune and synagogue newsletter which was widely read in their community causing pain and embarrassment to Michelle and Barbara. (R. 73, 72:18-73:7).

c. Lester and Linda's willful actions surrounding Leslie's death and the eventual secret sale to Moonstone were orchestrated to prevent any value being realized by Barbara or Leslie's Estate.

Rukin testified all client files were removed from Leslie's office and moved into Lester's office within a week of Leslie's death. (R. 417, 413:24-414:24). At approximately the same time as the client files were moved to Lester's office the locks were changed in order to prevent Barbara from entering the office and taking Leslie's files. (R. 177, 174:7-175:12). Barbara was not informed that the locks were changed nor that the files were being moved out of Leslie's office. (R. 181, 176:2). The locks were changed prior to Leslie's death and Leslie was not given a copy of the new key. (R. 177, 174:10-24). Everything in the office continued the same after Leslie's death except that all calls were sent to Lester and no money was paid to Leslie. (R. 179, 176:20-177:16).

Lester knowingly sold what he asserted was Leslie's sole proprietorship without any consent of or payment to Leslie's Estate. Lester testified as follows:

“Q. Why do you have authority, you, Lester Mandelstein, to include Leslie-adviser-code clients in the sale of assets to Moonstone Asset Management?

A. Well, how do you deal with a dead man?

Q. It's not so much dealing, sir. It's the value. If there's some value in this client list...that a third party obviously is interested in ... and paid value for, the value should be conveyed to whoever the person is on the other side; and if that person is deceased, then to his estate. So that's really my question. These are included, you agree with those my number, 31 accounts, were in Exhibit A client list, those were under Leslie's adviser code; correct?

A. Could be. I didn't count them up ...

Q. But there are some in the 44R adviser code?

A. Yes, yes. Of course.

Q. They are included in your sale, Leslie Mandelstein's sale of assets to Moonstone Management?

A. Yes.

Q. But, I mean, these are clients -- it's not just a mere technicality. I mean, he built these clients under 44R; correct?

A. Yes.

Q. He developed them?

A. Yes.

Q. But yet they're included in this client list under your name.

A. Well, where should they be when he's deceased?

...

Q. Why is the beneficiary, the monetary beneficiary, financial beneficiary of this agreement which includes some of Leslie's clients, why is that beneficiary you?

A. Who else should it go to?...

Q. If those 44R-adviser-code clients aren't in this client list, the compensation that Moonstone would pay you would be less; correct?

A. Yes.

Q. Okay. You made no effort to contact the estate?

A. To contact what?

Q. The estate, your son Leslie's estate, actually his executor, Ms. Barbara, about compensation that could be paid to the estate for money you would receive for Leslie's clients being sold?

A. I don't recall that I did....

Q. So you made no offer to compensate the estate --

A. No.

(R. 371, 368:14-370:11)(emphasis added)

The sale of Leslie's share of the business (or Leslie's sole proprietorship) was kept secret from Barbara and she did not receive any proceeds. (R. 119, 117:1-14).

Part of the sale to Moonstone was securing ongoing employment of Rukin after CPG was sold. Rukin testified regarding her compensation as follows:

Q. Were you paid based on your time spent at the office?

A. Yes.

Q. How much were you paid?

A. I don't remember. It was so much a day.

Q. Was it more or less \$1,000 a day?

A. Less.

Q. Was it more or less than \$500 a day?

A. Less.

Q. Was it more or less than \$100 a day?

A. I believe it as little more.

Q. Okay. So somewhere between \$100 and \$500 a day?

A. Probably. I don't remember. working for him?

A. Probably the same.

(R. 409, 405:10-406:2)

d. Despite the blurred lines between entities, it was clearly established by Lester, Rukin, and Leslie whose clients were whose and whether Leslie or Lester earned the fees from a specific client.

Lester explained that the clients were tracked on a spreadsheet with each assigned to one of the three entities based on the rep codes utilized by TD Ameritrade. (R. 339, 336:1-24). Both Lester and Leslie had access to the spreadsheet and knew exactly how much money they had coming in. (R. 340, 337:1-8). Rukin reiterated that all of the fees and client allocation were tracked on an internal spreadsheet. (R. 411, 407:4-11). Rukin explained that throughout Leslie's life, clients and fees were allocated based on their internal

spreadsheet rather than whose name (Lester or Leslie) was on the Asset Management Agreement. (R. 416, 412:5-14). Furthermore, despite Leslie not being a registered investment advisor until about six months before his death he earned fees on his assigned clients. (R. 220, 217:14-218:10).

Plaintiff's expert, Sook Lee ("Lee"), reached her valuation opinion based on the allocation of clients on the internal spreadsheet utilized by CPG and explained:

I relied on the fact that Leslie managed certain client accounts on a daily basis, and that's how he got compensated, right, which he reported on his tax return. I know that one of the arguments in this case, or at least Ms. Puffer I think in her deposition said, uhm, she relied on the Asset Management Agreements to figure out, you know, which accounts belonged to who, but internally it's my understanding that Leslie and Lester kept good records of, you know, which clients, you know, they each managed on a regular basis. Right? So, I thought that was more appropriate to rely on rather than just an agreement that, you know, when you start out an account for, like, under a corporate umbrella, you know, I think that's common you sign these forms, corporate forms, but then you don't really know which agent that you're going to be working with on a regular basis, and ultimately who gets compensated is the manager that you work with. Right? I kind of relied on that to come up with a value for Leslie's.

(R. 284, 281:5-282:24).

Further, Lester admitted that he willfully withheld fees owed to Leslie after he died totaling \$17,000 despite the very clear fee allocation. (R. 117, 115:8-19).

e. Plaintiff adopted Defendants' expert's valuation methodology.

Fortunately, it was relatively easy to determine a value of the CPG and Leslie's sole proprietorship because an arms' length offer to purchase the businesses was made at about the time of Leslie's death by Paulson Wealth Management.

Defendant's expert, Katherine Puffer ("Puffer"), detailed the importance of the Paulson offer as follows:

I felt since the Paulson Wealth Management offer was actually an offer right on the table, being made two days before the valuation date, that that was the best method to value this company. I looked at the income approach. I was concerned that the income approach provided an estimate that perhaps has too much in the expenses. If somebody was buying this book and putting it in their existing book, they might be able to save more on expenses than what I estimated. As I said, the market approach, I generally use that as somewhat of a crosscheck or a reasonableness check for my other approaches. So, I felt like the Paulson Wealth Management offer was the best way to value this company, and that's how I arrived at my \$73,000.

(R. 591, 586:1-16).

Both experts relied heavily on Paulson's offer and Defendant's expert actually reached a higher valuation which Plaintiff adopted. Lee explained Puffers' methodology well and found it sound as applied to all three entities which are functionally the same. Lee testified as follows:

So, in order to come to her multiplier that she applied to the Custom Planning Group on a stand-alone basis, what she did was she got the revenue numbers divided by -- or the earnings divided by the revenue that she derived for CPG and comes to like 1.67 or something like that as a multiplier, and then she applies that multiplier to the number of CPG to get to the total valuation.

Q. In your opinion, could you apply the same revenue multiplier to any of the individual entities or...

A. Well, given that she started out with a total number that includes all three entities and derives a multiplier, I would think that if she had to value those entities separately, I would think the multiplier would stay the same. Then the revenue or the net profit for those three entities will change. Right? So, 1.67, the multiplier that she derived, would apply to Leslie's sole proprietorship as well as Lester's sole proprietorship.

(R. 305, 302:10-304:14).

Puffer explained the methodology for her revenue multiple as follows:

To come to a multiple of 1.64.

Q. Okay. So, the only factors in this equation are the revenues generated from the client relationships, from the clients?

A. Yes, that was my intent. Yes.

Q. Okay. And there's no other factors necessary to reach the 1.64 number?

A. Well, it's -- yeah. I estimated the payments for the client relationships. I estimated the total revenues generated from client relationships to come to a revenue multiple. (R. 101, 596:6-15).

Thus, adopting Puffer's methodology as endorsed by Lee, as of the date of Leslie's death, CPG, LLC is worth \$72,693, Lester's sole proprietorship was worth \$256,784.64, and Leslie's sole proprietorship was worth \$154,925.88.

Assuming three separate entities, the value stolen from Leslie's Estate was worth \$191,272.38 for 50% of CPG and Leslie's sole proprietorship which is almost exactly what Lester offered to Barbara days after Leslie died. All of the resulting litigation was completely unnecessary as the value determined by experts is almost exactly what Lester promised Barbara and then reneged on.

STANDARD OF REVIEW

Purely legal argument such as construction of the pleadings is subject to *de novo* review. *People v. Brown*, 225 Ill. 2d 188, 198, 866 N.E.2d 1163 (2007).

The construction of a statute, such as the Limited Liability Company Act 805 ILCS 180 *et seq.* (“LLC Act”) is also a question of law that is reviewed under the *de novo* standard. *Murphy-Hylton v. Lieberman Management Services, Inc.*, 72 N.E.3d 323, 410 Ill. Dec. 937 (2d Dist. 2016). The interpretation of a statute and its application to undisputed facts is a question of law that is reviewed *de novo*. *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 236 (2005). Also, whether a statute has been violated is a question of law subject to *de novo* review. *Vine Street Clinic v. Healthlink*, 222 Ill. 2d 276, 278 (2006).

The decision to allow Plaintiff leave to file a jury demand is made in the discretion of the trial court, and its decision will not be reversed unless there is an abuse of discretion. *Hernandez v. Power Constr. Co.*, 382 N.E.2d 1201, 1203, 73 Ill. 2d 90, 95 (1978).

ARGUMENT

This appeal focuses on several errors that resulted in an oddly narrow ruling that did not award Barbara full relief for the vicious conduct of Lester and Rukin and needlessly opened the door for future litigation between the parties over the disposition of Leslie's sole proprietorship. These issues should have all been decided by a jury who would have punished Lester's reprehensible treatment of his daughter-in-law and granddaughter as detailed at trial.

I. THE CIRCUIT COURT ERRONEOUSLY DENIED PLAINTIFF'S MOTION FOR LEAVE TO FILE JURY DEMAND

The Illinois Supreme Court held in *Stephens v. Kasten*, "To arbitrarily refuse to accord to parties litigant the right to file a jury demand after time therefor has expired, upon good cause shown, is an abuse of the discretion of the court". *Supra*, 383 Ill. 127, 135, 48 N.E.2d 508, 512 (1943)

Plaintiff's original counsel erroneously failed to file a jury demand when the complaint was filed. (C. 71). On June 9, 2016, Plaintiff substituted counsel. (C. 317). On or July 19, 2016, immediately after successor counsel realized his predecessor's error of failing to file a jury demand, Plaintiff filed a motion for leave to file a jury demand *instanter* pursuant to Illinois Supreme Court Rule 183. (C. 355).

The Circuit Court erred in denying the motion for leave to file a jury demand by not following controlling analogous precedent that would have allowed for Plaintiff to file a jury demand over a year before trial. The right to

jury trial is of constitutional dimension, courts will liberally construe statutes which regulate exercise of the right. “[T]he inclination of the court should be to protect and enforce the right.” *Hernandez v. Power Constr. Co.*, 73 Ill. 2d 90, 95, 382 N.E.2d 1201, 1203 (1978).

The present case is directly analogous to *Stephens v. Kasten*, where the Illinois Supreme Court affirmed the Appellate Court allowing plaintiff to file an untimely jury demand when Plaintiffs’ predecessor counsel was careless “insurance defense counsel” who failed to make a jury demand and substitute counsel later moved for leave to file a demand. The Illinois Supreme Court reasoned it was necessary to allow new to counsel of Plaintiff’s choosing to be heard on the issue. *Stephens*, 383 Ill. at 130. In this case, Plaintiff was initially represented by insurance defense attorneys by trade who fell into the representation because their firm drafted Leslie Mandelstein’s Will who carelessly failed to make a jury demand in a fact-intensive, emotional case driven by punitive damages. Just like in *Stephens*, shortly after Plaintiff retained trial counsel of her choice, a motion for leave to file a jury demand was filed. (C. 366). The Circuit Court made no finding that filing the untimely jury demand over year prior to trial would create any inconvenience or prejudice. Thus, since the Illinois Supreme Court found the carelessness of “insurance defense counsel” amounted to good cause this Court should find the carelessness of Chuhak Tecson, P.C. to be good cause here. 383 Ill. at 135.

Illinois Supreme Court Rule 183 provides:

The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time.

“On good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of any act or the taking of any step or proceeding prior to judgment.” *Hernandez*, 73 Ill. 2d at 95, 382 N.E.2d at 1203. Allowing leave to file a jury demand early in the proceedings would not prejudice Defendants and the error of prior counsel was directly analogous to the error in *Hernandez* and *Stephens* where the Illinois Supreme Court held it was an abuse of discretion to deny an untimely jury demand pursuant to Sup. Ct. R. 183.

Application of Supreme Court Rule 183 in the present case is also analogous to *McGrath Heating & Air Conditioning v. Gustafson* 38 Ill. App. 3d 465, 348 N.E.2d 223 (1st Dist. 1976), where the court allowed the untimely filing of an answer. In *McGrath*, the defendant filed affirmative defenses and a counterclaim, the plaintiff did not file its answers until after the trial and the close of all evidence during closing argument. The plaintiff argued that since the tardiness of the filing was inadvertent, no new matters were raised in the late pleadings, and that there was no prejudice to defendant, the late filings were proper. The court seemed to agree and further noted that the defendant/counter-plaintiff proceeded to trial without either an answer to his

counterclaim or reply to his affirmative defense and presented no motions to require the plaintiff's answers or for default judgments. The Appellate Court also placed the burden of showing prejudice by the late filings on the nonmovant and indicated that since it did not show any prejudice caused to it by the late filing the filings were proper.

The Circuit Court abused its discretion in denying the motion for leave to file a jury demand by ignoring directly analogous controlling Illinois Supreme Court precedent. (C. 366).

II. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN HOLDING LESTER DID NOT OWE FIDUCIARY DUTIES TO LESLIE'S ESTATE.

The disposition of a man's business when he dies should not be first come, first serve. The State of Illinois employs laws to prevent vultures from sweeping in to pick the bones of a decedent's business prior to court administration of his estate. Affirming the Circuit Court's erroneous holding that no fiduciary duties are owed to a deceased limited liability company ("LLC") member creates a dangerous precedent that would incentivize LLC members to loot the deceased member's offices before his body is cold rather than submit to probate administration. Affirming the Circuit Court would authorize dangerous self-help rather than allowing probate courts to properly administer estates.

The evidence presented at trial was disheartening. Shortly after Leslie became gravely ill, his wife and daughter were locked out of his office and then, behind locked doors, the clients of CPG, LLC and Leslie's sole proprietorship

were transferred out of the control of Leslie's estate and sold with no payment to the estate.

A. The Circuit Court ignored controlling Second District precedent requiring business partners and shareholders to not breach fiduciary duties to the estate of deceased partners and shareholders.

Lester owed fiduciary duties to Leslie's Estate when dealing with Leslie's interest in CPG and his sole proprietorship. Lester breached these duties by stealing Leslie's clients and not paying his estate anything for his 50% interest in CPG. Controlling precedent required Lester "to exercise the highest degree of honesty and good faith in the dealings and in handling of business assets, thereby prohibiting enhancement of [his] personal interests at the expense of the interests of the enterprise or of other stockholders or partners. *Hagshenas v. Gaylord*, 199 Ill. App. 3d 60, 71, 557 N.E.2d 316 (1990) (owner of 50% of the stock in a close corporation owes this duty, just as a partner in a partnership would). There is no doubt, that Lester's duty to exercise "the highest degree of honesty and good faith" in his dealings with the other shareholders or partners—Leslie's Estate—prohibited him from asserting control over Leslie's share of the businesses without compensating Leslie's Estate. *Prignano v. Prignano*, 405 Ill. App. 3d 801, 812, 934 N.E.2d 89, 101-102 (2d Dist. 2010) (Brother owed fiduciary duties to estate of his deceased brother/business partner's family when assuming control of deceased brother's business).

The Circuit Court erred by ignoring *Prignano v. Prignano*, which is analogous and controlling here, and should apply to an LLC. This Court held in *Prignano* that a business partner owed fiduciary duties to the estate of his partner when his partner died. *Id.* at 102. This Court reasoned the surviving partner was obligated “to exercise the highest degree of honesty and good faith in the dealings and in handling of business assets, thereby prohibiting enhancement of [his] personal interests at the expense of the interests of the enterprise or of other stockholders or partners.” *Id.*

When reviewing analogous facts, this Court held:

There is no doubt, however, that Louis’s duty to exercise ‘the highest degree of honesty and good faith’ in his dealings with the other shareholders or partners, viz., Nancy and the children, prohibited him from asserting control over their share of the businesses without compensating them. Thus, the evidence supports the trial court's finding that Louis breached his fiduciary duties in this respect as well. We find no error in the trial court's determination that Louis breached his fiduciary duties toward the plaintiffs.

Prignano v. Prignano at 102.

Correctly applying *Prignano* to this case would prohibit Lester from transferring Leslie’s clients away from his estate and selling Leslie’s business to a third party with no compensation paid to his estate. The Circuit Court erroneously ignored this directly controlling analogous precedent and must be reversed or else risk incentivizing a cash grab whenever business partner or LLC member dies.

B. Assuming *arguendo*, the holding in *Prignano* does not apply to members of a limited liability company, the Illinois LLC Act creates a duty to purchase Leslie's distributional interest which was disrupted by Lester's willful breaches of fiduciary duties.

Even if no fiduciary duties were owed to Leslie's Estate after Leslie died, Lester's nefarious conduct of taking Leslie's files, changing the locks on office door, and secretly selling the clients still is a direct violation of 805 ILCS 180/35-60(a). Under section 35-60(a) of the LLC Act, upon death of a member, "[a] limited liability company shall purchase a distributional interest of a member for its fair value determined as of the date of the member's dissociation." 805 ILCS 180/35-60(a). It was impossible to timely determine the value of what remained of Leslie's business, whether his sole proprietorship or part of CPG, because Lester stole away the records and transferred the clients before Leslie's body was cold. *See* (C. 901).

To hold fiduciary duties do not run along with the statutory duties to buy out a deceased member through purchase of the deceased member's distributional interest leaves a hole in the statutory framework that will be exploited if the Circuit Court is affirmed. Affirming the Circuit Court on this point will incentivize LLC members to secretly loot their deceased partners' business rather than allow it to be properly administered in probate just as Lester did here.

C. **Assuming *arguendo*, the holding in *Prignano* does not apply to members of limited liability company, the LLC Act provides that fiduciary duties are owed to the estate.**

The LLC Act provides:

If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in subsection (e) of Section 30-10 [805 ILCS 180/30-10] **and, for the purposes of settling the estate, the rights of a current member under Section 10-15....**

805 ILCS 180/30-25 (emphasis added)

Locking doors, hiding records, selling Leslie's business to Moonstone, all made it impossible for Leslie's Estate to exercise its rights to obtain records of the CPG and were a direct violation of 805 ILCS 180/30-25. By locking the Estate out of CPG and Leslie's sole proprietorship held therein, Lester was able to freely finagle Leslie's accounts to maximize the benefit received by Lester and minimize the amount owed to Leslie's Estate. To hold that the estate of a deceased LLC member is entitled to records but is not entitled to any damages or attorneys' fees resulting from breach of fiduciary duties attendant to hiding these records or damage to the businesses caused between death and the time of distribution incentivizes LLC members to loot their deceased partners' business with little or no real risk of damages. Assuming *arguendo*, *Prignano* does not apply, this Court should fill the statutory gap in the LLC Act between the moment a member dies and when his interest is distributed by holding a member owes fiduciary duties to the estate of a deceased member prior to distribution pursuant to 805 ILCS 180/35-60(a).

Filling this statutory gap furthers the purposes of the LLC Act and Probate Act.

D. In the alternative, the Circuit Court erred because Lester's breach of fiduciary duty occurred prior to Leslie's death because the locks were changed before Leslie's death.

Lester breached his fiduciary duties to Leslie before he died by locking him out of the office when he first became ill. The locks were changed prior to Leslie's death and Leslie was not given a copy of the new key. (R. 177, 174:10-24). Barbara was not informed that the locks were changed nor that the files were being moved out of Leslie's office. (R. 181, 176:2). The locks were changed prior to Leslie's death and Leslie was not given a copy of the new key. (R. 177, 174:10-24).

Accordingly, the Circuit Court erred where the evidence showed fiduciary duties of access to the business were breached prior to Leslie's death thus duties were breached to Leslie personally and that claim survived his death.

III. THE CIRCUIT COURT ERRONEOUSLY DENIED PLAINTIFF'S REQUEST FOR FEES AND EXPENSES UNDER SECTION 35-65(D) OF THE LLC ACT.

The Circuit Court erroneously denied Plaintiff's request for fees pursuant to Section 35-65(d) of the LLC Act where it was undisputed at trial that Lester admitted Leslie's share of the combined business was worth \$200,000, offered to pay Barbara \$200,000, then reneged on the offer, and years of litigation ensued after the vexatious refusal to pay and Lester's subsequent attempts to steal Leslie's business and sell it to Moonstone.

In this case, there was a clear offer and admission as to the value of the withdrawing partner's share of the business and after the offer was revoked the remaining partner stole and sold the business! If this conduct does not amount to "bad faith" then what does? The Circuit Courts require direction on interpretation and application of this statute that has not benefited from any reported decisions interpreting its application.

If the Circuit Court is affirmed, the LLC Act will be gutted of its enforcement mechanism because it is highly unlikely there could be a more egregious situation than where the Defendant admits the value, makes an offer to purchase the business, and then reneges on the offer in favor of years of family litigation.

The LLC Act expressly allows for attorney fees to be awarded where a defendant fails to timely make an offer to purchase the distributional interest or otherwise does not act in good faith. 805 ILCS 180/35-65(d) provides:

If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with Section 35-60.

(emphasis added)

In this case, the value of Leslie's distributional interest was clear at the time of his death and Lester even offered to pay Barbara \$200,000 before revoking his offer. Accordingly, there was no reason not to offer some amount of money to purchase Leslie's distributional interest as required by statute prior to Plaintiff filing suit and incurring over \$200,000 in attorneys' fees.

The delay in resolving this distribution was completely arbitrary and vexatious as was made clear through the testimony of Rukin who testified that she dislikes Barbara and harbors resentment for her. This resentment was put on public display when Rukin omitted any reference to Barbara or Michelle from Lester's obituary. Rukin used this litigation to exercise her resentment against Barbara by forcing her to incur tremendous expense to recover what belonged to her husband.

This case is a prime example of when attorneys' fees should be awarded pursuant to 805 ILCS 180/35-65(d) when a LLC member rescinded a

reasonable offer to purchase the distributional interest and both experts opined as to the value of the business based exclusively on information available to Lester at the time Leslie died consistent with the amount offered.

IV. THE CIRCUIT COURT ERRED AS A MATTER OF LAW HOLDING THAT LESLIE'S SOLE PROPRIETORSHIP WAS NOT AT ISSUE IN THE PLEADINGS IN THIS CASE.

The complaint is inartfully pled but certainly is sufficient to state a claim for all of the relief sought at trial including payment of the value of Leslie's sole proprietorship. The Circuit Court did not award any damages based on the conversion of Leslie's sole proprietorship by erroneously holding: "This case is about CPG only, nothing has been pled regarding Leslie's Sole Proprietorship". (A-13, C.908).

In fact, the Complaint pled the following regarding the business of Leslie's Estate—Leslie's sole proprietorship—separate from CPG:

Despite his fiduciary duties, shortly after Decedent's death, Lester contacted clients who were clients Developed by the Decedent during his lifetime, who business was valuable to **either the estate or CPG, and took actions to divert those clients away from the estate or CPG, to Lester.**

Lester's failure to provide information described above, his attempts to divert clients **from the estate or CPG** to himself, and his failure to pay the Decedent's estate the Decedent's advisory fees, are breaches of his fiduciary duties.

Decedent's estate has an absolute and unconditional right to the immediate possession of the advisory fees attributable and payable to Decedent, which Lester has wrongfully refused to distribute to Decedent's Estate.

(C 74-75, emphasis added).

At trial, Plaintiff presented two alternative theories each resulting in similar damages. First, Plaintiff argued Leslie was entitled to one half of CPG, LLC and that CPG was comprised of Leslie's sole proprietorship, Lester's sole proprietorship, and the clients directly controlled by CPG. Second, Plaintiff claimed Leslie's Estate was entitled to his sole proprietorship and one half of CPG, LLC.

The clumsy complaint was sufficient to state a claim for the value of Leslie's sole proprietorship. "Pleadings are to be liberally construed so that controversies may be determined on their merits to do substantial justice, rather than on technicalities; however, a pleading must contain such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet." *Davis v. United Fire & Casualty Co.*, 81 Ill. App. 3d 220, 400 N.E.2d 984 (3d Dist. 1980). "Under this section, all pleadings should be liberally construed with the aim of avoiding the procedural rigidities of former times; the ultimate measure is one which facilitates the doing of substantial justice between the parties involved." *Fort v. Smith*, 85 Ill. App. 3d 479, 407 N.E.2d 117 (5th Dist. 1980). Applying these well-settled rules favoring liberal construction to the pleadings at issue in this case necessarily mandates that the Court construe the pleadings to cover a claim for the value of Leslie's sole proprietorship whether that is considered part of CPG, LLC or independent of it. To interpret the pleadings any other way is unnecessarily

rigid and formulaic and contrary to the Court's prior rulings on numerous issues related to the value of Leslie's sole proprietorship.

Any argument based on the supposed scope of the pleadings was waived through the parties' action at trial. Both sides argued and presented claims and defenses based on the value of Leslie's sole proprietorship. The law is clear, "By the testimony offered by the parties and by their conduct at the trial, all deficiencies with reference to any variations between the allegations and the proof were waived." *Hemingway v. Skinner Engineering Co.*, 117 Ill. App. 2d 452, 254 N.E.2d 133 (2d Dist. 1969). In *McKinney v. Nathan*, 1 Ill. App. 2d 536, 543, 117 N.E. 2d 886 (1954), the Illinois Supreme Court held:

The parties may, by the introduction of evidence or their conduct in the trial, waive formal pleadings or form their own issues on the evidence introduced, and they may voluntarily present under the evidence issues not presented by the pleadings. An objection that a certain matter is not an issue under the pleadings or that it is not denied or properly denied may be waived by a party where he introduces or brings out evidence bearing on the subject or tries the case as if the matter were not in issue.

In this case, where Plaintiff's expert was allowed to opine without objection as to the value of Leslie's sole proprietorship (R. 591, 305) and Plaintiff's pre-trial and post-trial briefs (C. 744, C. 616) argued the value of Leslie's sole proprietorship, the Circuit Court erred in rigidly construing the pleadings and not at least finding the construction of the pleadings was waived with the introduction of evidence that would not otherwise be relevant.

WHEREFORE, for the reasons stated herein, Plaintiff, BARBARA MANDELSTEIN, as Independent Executor of the ESTATE OF LESLIE

MANDELSTEIN, respectfully asks this Court to reverse the Circuit Court's orders detailed herein and set this case for a jury trial. In addition, Plaintiff asks that the Court accord any further relief that it deems just and appropriate under the circumstances.

Respectfully submitted,

**BARBARA MANDELSTEIN, AS
INDEPENDENT EXECUTOR OF THE
ESTATE OF LESLIE MANDELSTEIN,
DECEASED,
Plaintiff/Appellant**

By: /s/ Alexander N. Loftus
One of Her Attorneys

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Dated: April 10, 2018

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 29 pages.

**BARBARA MANDELSTEIN, AS
INDEPENDENT EXECUTOR OF THE
ESTATE OF LESLIE MANDELSTEIN,
DECEASED
Plaintiff/Appellant,**

By: /s/ Alexander N. Loftus

One of Her Attorneys

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APPENDIX

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IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS
Probate Division

FILED

NOV 16 2017

Eva Courtney Weinstein
CIRCUIT CLERK

Estate of Leslie Mandelstein, Deceased)	No. 14 P 899
)	
)	
BARBARA MANDELSTEIN, as)	Supplemental Proceeding
Independent Executor of the)	
Estate of Leslie Mandelstein, Deceased)	
Plaintiff/Counter-Defendant,)	
)	
vs.)	
)	
Estate of LESTER MANDELSTEIN,)	
Deceased)	
and)	
CUSTOM PLANNING GROUP, LLC.)	
Defendants/Counter-Plaintiffs)	

RULING AND ORDER

This cause coming on to be heard for Trial on August 15, 16, 17 and 18, 2017 on "Complaint" filed on February 10, 2015 by Barbara Mandelstein, Independent Executor of the Estate of Leslie Mandelstein, Deceased, represented by Alexander N. Loftus of Stoltmann Law Offices, and on "Amended Answer and Affirmative Defenses to Complaint and Counterclaim of Lester Mandelstein" filed on October 16, 2015 by Lester Mandelstein, now the Estate of Lester Mandelstein, Deceased, represented by Keith B. Baker and David Hartley of Keith B. Baker, Ltd., and on "Amended Answer and Affirmative Defenses to Complaint and Counterclaim of Custom Planning Group, LLC" filed on October 16, 2015 by its attorney, Christopher M. Saternus of Christopher M. Saternus, Attorney at Law, P.C.;

The Complaint containing the following Counts:

- Count I: Demand for Accounting to Custom Planning Group
- Count II: Breach of Fiduciary Duty against Lester Mandelstein
- Count III: Constructive Trust against Lester Mandelstein and Custom Planning Group
- Count IV: Conversion against Lester Mandelstein
- Count V: Dissociation (sic) from LLC and Purchase of Decedent's Membership Interest

The Counter-Claim of Lester Mandelstein containing the following Counts:

- Count I: Balancing Contributions
- Count II: Repayment of Advances
- Count III: Improper Distribution to be Repaid
- Count IV: Conversion
- Count V: Unjust Enrichment

The Counter-Claim of Custom Planning Group, LLC containing the following Counts:

- Count I: Improper Distribution to be Repaid
- Count II: Conversion
- Count III: Unjust Enrichment

Numerous Affirmative Defenses were raised by both Defendants and will not be itemized here but will be dealt with in the Court's findings of facts and conclusions of law. The Court notes that most of the Fifteen Affirmative Defenses pled by each Defendant were objected to by the Plaintiff as containing only legal conclusions. The Court also notes that many of the issues raised as Affirmative Defenses are also contained in the Counter-Claims.

Numerous exhibits were submitted to the Court by stipulation of the parties, including the Evidence Deposition of Lester Mandelstein. Lester Mandelstein passed away while this proceeding was pending, and his Estate was substituted as a Defendant. The parties submitted written closing arguments in support of their claims, as well as responses and replies. The final arguments were received by this Court on October 16, 2017. All references contained in this Ruling to Plaintiff include Plaintiff as Counter-Defendant and all references to Defendant include Defendant as Counter-Plaintiff.

The Court has taken all the testimony, exhibits and legal arguments into consideration, even if every portion of the testimony, evidence or legal argument is not mentioned in this Ruling. The Court notes that the attorneys were well-prepared and professional in their presentation of evidence to the Court. The Court finds that it has jurisdiction over the parties and the subject matter of this action and is fully advised in the premises.

THE COURT FINDS:

FACTUAL BACKGROUND:

1. Leslie Mandelstein (hereinafter referred to as "LESLIE") died on August 31, 2014. Barbara Mandelstein (hereinafter referred to as "BARBARA") is LESLIE's wife and is the Independent Executor of LESLIE's Estate.
2. Lester Mandelstein (hereinafter referred to as "LESTER") died on July 23, 2016, after this litigation commenced. LESLIE is LESTER's son. Linda Rukin (hereinafter referred to as "LINDA") is LESTER's daughter, LESLIE's sister and Independent Executor of LESTER's Estate.

3. Custom Planning Group, LLC (hereinafter referred to as "CPG") was created in 1991. The 1991 U.S. Partnership Return of Income, Form 1065, is labeled "Initial Return" and covers the period from June 3, 1991 to December 31, 1991 (*Defendant Exhibit K*). This Tax Return indicates that there were seven (7) Partners or Members to the LLC, each with a 14% share of profits and loss and each having invested \$750.00 into their capital account. LESTER and LESLIE were two of those Members.
4. In a review of CPG's Form 1065 Tax Returns for tax years 1991 through 2014 (*Defendant Exhibits K through GG*), the Court finds the following:
 - A. From 1991 through 1994, there were seven (7) Members with a 14% interest in CPG. All the Members shared in the losses and gains. Some of the Members contributed monies to CPG where others did not. The contributions of monies paid by some Members and not others affected the Capital Accounts of the Members, such that certain Members had larger Capital Accounts than others.
 - B. In 1995, there is a notation in the 1065 Tax Return that there was a payment of funds to a deceased partner and the membership interest of the remaining six (6) Members increased to 16 2/3%. LESTER and another Member's Capital Account increased, and all the other Members' Capital Accounts decreased, indicating that LESTER contributed funds to the buyout of the deceased Member.
 - C. From 1995 through 2001, the six (6) Members are represented in the Form "Schedule K-1 Partner's Share of Income, Credits, Deductions, etc." attached to the 1065 Tax Returns. The Exhibits are not all complete, but it appears that the Capital Accounts of each Member were constantly changing depending on the year. At least one Member's negative Capital Account was more negative than LESLIE's. At one point, all the Members had negative Capital Accounts. Each Member's reportable share of loss varied dramatically from year to year, sometimes with one Member reporting most of the loss without any cash contribution so that the Member's Capital Account only became a larger negative. There appears to be no logic to the assignment of the losses to one Member or another. The Court notes that there was no testimony regarding the Capital Accounts and the gains and losses of CPG from 1995 to 2001. These are the Court's own observations from a review of the Exhibits. The Court finds that in 2001, every Member had a negative Capital Account and shared in the losses that year.
 - D. In 2002, LESTER appears to have contributed a sum of money to CPG and four (4) other Members are no longer a part of CPG; suggesting a "buyout" occurred. The Exhibit is missing LESLIE's Schedule K-1 for 2002, but 2003 confirms that only LESLIE and LESTER remain as Members of CPG. In 2002, LESLIE's Capital Account is at "-12,293" (a negative), where it will remain until his death in 2014. From this year forward, LESTER contributes varying amounts of additional capital to CPG which allows him to take 100% of the losses of CPG on his personal return. There was no evidence presented regarding the "buyout" of the other Members in 2002, or if their Capital Accounts or lack of contribution to losses incurred by CPG were taken into

consideration in determining the "buyout" amount. The only testimony related to this issue came from LESTER where he stated that he thought the amount paid to the former Members would have been less than \$5000 each, but does not remember exactly.

5. In 1994, LESLIE signed an Agreement with CPG (*Defendant Exhibit UU*) that stated that he is a partner with CPG, that any fee collected from a client will become a part of CPG, and that he will share equally in the profits or losses of CPG. This Agreement also states that CPG "is a registered investment adviser" which "provides comprehensive financial planning services to advisory clients in the form of analysis and recommendations in the areas of business planning, retirement planning, life and health insurance, estate planning, tax planning and investments." Because this Agreement was signed in 1994, when there were six (6) Members, the Court finds that common sense suggests that this Agreement was signed by all the Members at that time. During the years with six (6) Members, the 1065 Tax Returns indicate that the language in the 1994 Agreement was not applied consistently to profits and losses between the Members. Therefore, other verbal agreements must have been made between the Members regarding the division of profits and losses. The validity of the 1994 Agreement is called into question based on the practice and actions taken by these Members. In addition, there was no Operating Agreement of CPG during its entire existence that would have outlined the Member's agreement on all issues related to the operation of CPG, including contributions of capital and balancing of losses.
6. LESTER consistently testified in his Evidence Deposition (*Defendant Exhibit BBB*) that there were three entities that existed operating out of the office located at 450 Skokie Blvd, Suite 505, Northbrook, Illinois. There was LESTER's sole proprietorship and LESLIE's sole proprietorship and CPG.
7. From 2003 forward, it is undisputed that LESTER took the expenses shared by all three (3) entities and represented them only under CPG for tax purposes, which allowed LESTER to report 100% of the substantial loss for CPG on his personal income tax returns. This reporting by LESTER of all expenses of the office on the CPG 1065 Tax Return was utilized by Plaintiff in support of their argument that CPG was one entity under which all the businesses operated for valuation purposes.
8. LESTER's personal income tax returns for 2010 through 2014 (*Defendant Exhibits A through E*) consistently indicated that LESTER's sole proprietorship income was reported on Schedule C and 100% of the CPG losses were reported on Schedule E.
9. LESLIE's personal income tax returns for 2010 through 2014 (*Defendant Exhibits F through J*) also consistently indicated sole proprietorship income for LESLIE was reported on Schedule C with only "0" to report on Schedule E for his membership interest in CPG.
10. The reporting of sole proprietorship income by both LESTER and LESLIE on their individual tax returns was utilized by Defendant to support the argument that there were three (3) separate businesses, of which CPG was one.

11. LESTER testified that CPG was created so that he and the other Members could take on clients that signed up with CPG from Seminars, which he and the others would organize. LESTER believed this offered protection to he and the other Members of CPG from any liability that might occur with clients with which they had no prior dealings. The Court finds that the Form 1065 Tax Returns for CPG always described its business as "Seminars" and "Retirement Planning".
12. LESTER testified that around 2012, CPG signed up with TD Ameritrade who became the Custodian of all the accounts of the two sole proprietorships and CPG. All the accounts were titled under CPG as the Account Representative (*Plaintiff Exhibits 2 and 3 and Defendant Exhibit DDD*). LESTER stated that the accounts were under different "Rep Codes" so that it was clear whose client was who's. LESTER also testified that TD Ameritrade insisted on CPG being the listed Investment Agent/Advisor/Representative on all accounts for TD Ameritrade's convenience. All accounts being under CPG at TD Ameritrade was utilized by Plaintiff to support the argument that there was only one business, CPG, that held all the clients, under which the other businesses operated, for valuation purposes.
13. LESTER was a Registered Investment Advisor (hereinafter referred to as "RIA"). It is required by law (Illinois Securities Law of 1953) that at least one person in an Investment Group be an RIA if you are advising clients regarding investments and securities. LESLIE was not an RIA until 2014. CPG was a legitimate investment advisory group because of LESTER. LESLIE needed to associate with LESTER to handle his sole proprietorship client accounts prior to 2014. LESLIE could not have Asset Management Agreements (hereinafter referred to as "AMA") with his clients because he was not a RIA. LESTER recognized this so that even if LESTER's name was on an Asset Management Agreement, LESTER still gave LESLIE the credit for fees for that client because the client was LESLIE's. LESTER pointed out in his testimony that on the AMA's that were for LESLIE's client, that LESTER would sign with LESLIE and LESLIE would be his agent. When LESLIE became a RIA in 2014, LESLIE moved some of his clients over to an AMA under his name. In addition, there were client's that signed AMA's with LESTER for CPG. These clients were shared equally between LESTER and LESLIE regarding the assignment of the fees (*Defendant Exhibits II through PP*).
14. LESTER kept track of whose client was who's in 3 categories on quarterly spread sheets: "LESLIE", "CPG" or "LM" (LESTER) when he broke down the fees to be paid to him, LESLIE and CPG (*Defendant Exhibits EEE through OOO*). Regardless of AMA, LESTER knew the clients that were LESLIE's and made sure that LESLIE was credited with those fees.
15. After LESLIE became a RIA, there were three (3) 2014 Form ADV: Firm Brochures sent to all the clients; one for LESTER, one for LESLIE and one for CPG (*Defendant Exhibits QQ through SS*). This ADV is required of Investment Advisory firms and includes a great deal of information about each business' fees and compensation, types of clients, amounts of holdings, methods of analysis, disciplinary history, advisor resumes, and more. These forms also name the "Compliance Officer" for each firm. These disclosures are required of any

business that involves investments and securities. The three (3) ADVs, schedules of payment of three (3) sets of fees and three (3) sets of AMAs were utilized by the Defendants in support of their arguments for three (3) independent businesses, not one (1) under CPG.

16. Throughout the years from 2002 forward, LESLIE and LESTER wrote checks from the CPG checkbook. It was from this checkbook that the accountant compiled the information to place on the CPG Form 1065 Tax Returns. At times, LESLIE did not notate for what his check was written (*Defendants Exhibit VV through WW*). The Defendants argue that these checks were "unauthorized withdrawals" by LESLIE. When the checkbook balance would get low, LESTER would add money from his personal account to maintain CPG. All the expenses of the office were paid from this account and therefore deducted by the accountant on CPG's Form 1065.
17. When LESLIE died after an extensive illness, LESTER contacted LESLIE's clients to request that they sign new AMAs with him. LESTER testified that he did this because LESLIE could no longer represent his clients after his death or collect the fees; the clients needed new AMAs on their accounts. BARBARA argued that LESTER was stealing LESLIE's accounts because they were a valuable asset.
18. On October 22, 2015, an Asset Purchase Agreement was entered between LESTER and Moonstone Asset Management, Inc. and Karen Natkin for purchase of LESTER's assets (*Defendant Exhibit RRR*). A separate Asset Purchase Agreement was entered between CPG and Moonstone Asset Management, Inc. and Karen Natkin for CPG's assets (*Defendant Exhibit SSS*). The list of assets acquired included "Customer Lists", "Goodwill and Trade Names", and "Furniture and Equipment". LESTER admitted in his evidence deposition that certain clients on the Customer Lists had been LESLIE's before he died but that he had signed new AMAs with those clients since LESLIE's death.

PLAINTIFF'S ARGUMENTS:

1. Plaintiff argues that CPG consists of LESTER's clients, LESLIE's clients and CPG's clients and that LESLIE has a 50% interest in this "Consolidated CPG". Plaintiff urges the Court to find that CPG consisted of all the clients based on the sharing of common space and expenses; the placing of all expenses on the CPG tax return; the ADV form for LESTER which included the email address for CPG and included LESLIE as an investment advisor; the letterhead for each entity which included a footer listing CPG and LESTER; the account statements with TD Ameritrade all referring to CPG as their advisor; the pattern of LESTER assisting with LESLIE's clients when he was unavailable and vice-versa; and the testimony of BARBARA who believed this consolidation of all accounts under CPG to be true. The Plaintiff also points to a \$200,000 offer made to BARBARA by LESTER within days of LESLIE's death that indicates LESTER's view of a Consolidated CPG.
2. Pursuant to the Illinois Limited Liability Company Act (Illinois LLC Act), Plaintiff is entitled to the fair value of 50% of CPG upon LESLIE's passing. Pursuant to 805 ILCS 180/35-60(d), Defendant is required to pay LESLIE's estate his share of the

company within 120 days of his death. Plaintiff argues that this did not occur pursuant to law and the Defendants should be responsible for all attorney's fees, costs, interest and punitive damages.

3. The controlling statute provided (in 2014 and 2015) as follows in 805 ILCS 180/35-60:
 - a) A limited liability company shall purchase a distributional interest of a member for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under Section 35-1.
 - b) A limited liability company must deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than 30 days after the date determined under subsection (a) of this Section. The purchase offer must be accompanied by:
 - (1) A statement of the company's assets and liabilities as of the date determined under subsection a) of this Section;
 - (2) The latest available balance sheet and income statement, if any; and
 - (3) An explanation of how the estimated amount of the payment was calculated.
 - c) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under Section 35-1.
 - d) If an agreement to purchase the distributional interest is not made within 120 days after the date determined under subsection (a) of this Section, the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection (d) is plenary and exclusive.
 - e) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in Section 35-65 together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.
 - f) Damages for wrongful dissociation under Section 35-50, and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

4. Based on the statute, the Plaintiff argues that LESLIE is entitled to 50% of the value of the Consolidated CPG which is \$242,201. Also, Plaintiff is arguing that the Defendants did not attempt to make an offer of purchase of LESLIE's 50% share within the time frame outlined in the Illinois LLC Act so therefore pursuant to 805 ILCS 180/35-65(d) and (e), the Defendants should be liable for the attorney's fees, costs and interest incurred in this proceeding. Section 35-65(d) and (e) states that:
 - (d) If the court finds that a party to the proceeding acted arbitrarily, vexatious, or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with Section 35-60.
 - (e) Interest must be paid on the amount awarded from the date determined under subsection (a) of Section 35-60 to the date of payment.
5. The Court finds that the Illinois LLC Act was substantially amended effective July 1, 2017 and Sections 35-60 and 35-65 have been repealed in their entirety. The new statute is not retroactive so that the Court will apply the provisions of the Act that were in effect at the time of the death of LESLIE and the time of the filing of the Complaint. This allows the Court to value LESLIE's membership share of CPG and order a buyout of that share at a certain value. It is argued by the Defendant that Section 35-65 (d) and (e) only apply after trial and an award is made and therefore those sections do not apply to this matter because the trial and ruling have occurred after the repeal of that section. The Court disagrees and will apply the statute as it existed at the time of the filing of this action.
6. Plaintiff urges the Court to find a fiduciary duty owed by LESTER to LESLIE as a member of the LLC and to find a breach of that duty when LESTER locked the office, hid the files, transferred the clients into his name, and sold the business without paying LESLIE's estate anything.
7. Based on this breach of fiduciary duty, the Plaintiff is arguing for Punitive damages. Plaintiff urges the Court to view the Defendant's actions as willful, wanton, malicious and oppressive. Plaintiff points to the testimony of LINDA wherein she admitted she had hard feelings towards BARBARA and did not trust BARBARA.
8. Plaintiff argues that Defendants are guilty of conversion; that LESLIE'S interest in CPG was property of the estate and should have been properly wound up or sold by BARBARA rather than converted by LESTER. In addition, Plaintiff believes punitive damages are due to the Plaintiff where the defendant acts willfully or with such gross negligence to indicate a wanton disregard of the rights of others. In addition to Plaintiff's share of CPG, this conversion count would also include the approximate \$17,000 that was held by LESTER for fees earned by LESLIE before he died in the 3rd quarter of 2014. The Plaintiff argues that there is no justifiable reason why those monies were not turned over to LESLIE's estate and is another reason attorney's fees, costs, interest and punitive damages should be awarded.
9. Plaintiff argues for mandatory Pre-Judgment interest under 805 ILCS 180/35-65(e) which states that "Interest must be paid on the amount awarded from [the date of the

member's dissociation] to the date of payment." This would be 5% per annum under the Illinois Interest Act, 815 ILCS 205/2.

10. Plaintiff's Damage Calculation is as follows:

a. 50% of Consolidated CPG:	\$242,201.76
b. Fees earned prior to death:	17,000.00
c. Pre-Judgment Interest:	41,040.29
d. Attorneys' Fees:	266,717.66
e. Litigation Costs:	25,193.41
f. Punitive Damages:	1,000,000.00
g. TOTAL:	\$1,592,153.12

11. The Plaintiff requests in the alternative that if the Court finds that CPG did not include LESTER and LESLIE's sole proprietorship then 50% of CPG and LESLIE's sole proprietorship would total \$191,425.88 and the pre-judgment interest would therefore be only \$5,779.17 for CPG and the attorney fee award of 1/3 on the overall recovery would be adjusted accordingly.
12. The Plaintiff's arguments for punitive damages urges the Court to focus on LESTER and LINDA's animosity towards BARBARA; that their actions were filled with malice; that their actions were improper and meant to strip BARBARA of all financial means of pursuing this litigation for LESLIE's share of the business. The Plaintiff also points to LESTER making an offer to BARBARA of \$200,000 after LESLIE's death only to withdraw it shortly thereafter. Plaintiff argues that the \$200,000 offer indicates that LESTER knew the value of LESLIE's interest in CPG and did not pay it as he should have.
13. Regarding Defendant's Counter-Claim, Plaintiff argues that Defendant is inconsistent in their arguments. The Defendant's argue that LESLIE should be responsible for all the losses incurred by CPG and paid for by LESTER even though it is admitted that the losses on the tax returns were calculated by placing all the expenses for all three entities on CPG's return. Therefore, the Defendants are arguing for three separate entities on the one hand, but that all the expenses of those entities should be assessed to CPG and shared by LESLIE.
14. Plaintiffs also argue that the 1994 Agreement for the sharing of losses and gains is directly contrary to what the parties agreed to in practice every year as memorialized on the CPG tax returns where LESTER voluntarily took 100% of the losses, which benefitted him on his personal tax return.
15. Defendants state that there were unauthorized withdrawals by LESLIE, but Plaintiff argues that LESTER never testified the monies were stolen and that it did not change the parties' relationship. These withdrawals are not the "unauthorized withdrawals" that the statute forbids.
16. Finally, Plaintiff argues that unjust enrichment is not an independent cause of action, but it is a condition that may be brought about by unlawful or improper conduct as defined by law, such as fraud, duress, or undue influence. Plaintiff argues that there has not been a showing of fraud, duress or undue influence by the Plaintiff.

DEFENDANTS' ARGUMENTS:

1. Defendants argue that the evidence substantiates that there were three separate businesses: the sole proprietorship of LESTER, the sole proprietorship of LESLIE, and CPG. This argument is supported by the three (3) sets of Income Tax Returns: CPG's 1065 Tax Returns, LESTER's individual Tax Returns, and LESLIE's individual tax returns. Defendants argue that both Accountants' testimony support this analysis of the Income Tax Returns.
2. In addition, after LESLIE became an RIA, he sought out his clients to sign a AMA in his name alone. The Defendants argue that this action indicates that LESLIE understood the AMA had legal and financial significance and that LESLIE never believed that all three businesses were merged into CPG; if he did, he would have had his clients sign with CPG. There are three separate sets of AMAs when LESLIE passes in 2014.
3. The Compliance documents and Form ADV: Firm Brochure also outlined three separate investment advisory entities.
4. Finally, in the office, there were three separate filing cabinets and there were three separate invoices to TD Ameritrade for fees. LESTER painstakingly outlined the fees for each client, labeling them LESLIE, LM (LESTER), or CPG; and each entity was paid according to this fee schedule for many years.
5. The Experts testified to having no opinion on the issue of whether there were three or one entity but when CPG was valued alone, both expert opinions of value were very close.
6. Defendants also argue that LESTER did not owe LESLIE any fiduciary duty once LESLIE died. The only duty LESTER owed was under the Illinois LLC Act to purchase a distributional interest of the member for its fair value. BARBARA had no right to participate in the running or sale of CPG after LESLIE's death.
7. 805 ILCS 180/35-55 states as follows:
 - a) Upon a member's dissociation the company must cause the dissociated member's distributional interest to be purchased under Section 35-60.
 - b) Upon a member's dissociation from a limited liability company:
 - (1) The member's right to participate in the management and conduct of the company's business terminates ... and the member ceases to be a member and is treated the same as a transferee of a member.
 - (2) The member's fiduciary duties terminate ... and
 - (3) The member's duty of loyalty ... and duty of care ... continue only with regard to matters arising and events occurring before the member's dissociation ...
8. The alleged offer by LESTER to BARBARA days after LESLIE died for \$200,000 was denied by LESTER and had not been pled as a separate count alleging a binding offer with acceptance. This discussion between BARBARA and LESTER does not give rise to a fiduciary duty regarding CPG after LESLIE's death and should not be considered as any evidence of value. LESTER was distraught at this time, having just lost his son and a close friend.

9. Defendants' argue that LESTER had every right to approach LESLIE's clients regarding signing a new AMA with him because without LESLIE they had no one to service their accounts. The nature of the Investment business means that LESLIE did not have an ongoing interest in his client's affairs. LESLIE's clients needed a new RIA, and they were free to choose whomever they wished. LESLIE's death terminated his relationship with his clients.
10. In addition, Defendants' argue that Plaintiff has failed to prove Counts III and IV of their complaint regarding the advisory fees due LESLIE for the third quarter of 2014. Testimony from Lisa Lipin, an employee of LESTER, indicated that LESLIE was very ill and did not perform his job from August onward. Defendants argue that LESLIE cannot receive fees he did not personally earn.
11. Regarding the Counter-Claim, Defendants' argue that LESLIE took "unauthorized distributions." Under the Illinois LLC Act, a member is barred from making distributions to members if the LLC would not be "... able to pay its debts as they become due in the ordinary course of business." 805 ILCS 180/25-30. Defendants argue that because CPG had a loss on its 1065 Tax Returns for over a decade, that CPG could not pay its debts which makes any distributions taken by LESLIE unauthorized by law. Defendants argue that the sum of \$26,400 should be set off against any share of CPG to which LESLIE is entitled. This sum represents the checks written to LESLIE by LESLIE for which there was no description recorded in the checkbook.
12. Defendants argue that Plaintiff is obligated to pay \$12,293 to CPG due to LESLIE having a negative capital account when he died. Defendants argue that this amount should be set off against any share of CPG to which LESLIE is entitled.
13. Defendants argue that Plaintiff must pay 50% of all the losses of CPG over the years based on the 1994 Agreement between LESLIE and CPG. From 2003 to 2014, CPG recorded \$270,036 in losses and 100% of those losses were paid for by LESTER. Defendants argue that LESLIE owes 50% of these amounts to CPG.
14. In addition, LESTER spent an additional \$122,671.14 for services, software, and items used by CPG, LESTER's sole proprietorship and LESLIE's sole proprietorship. Defendant' argue that CPG owes LESTER one-third of these funds, which is \$40,890.38, and LESLIE owes 50% of that amount, which should be off set from any share of CPG to which LESLIE is entitled.
15. Therefore, when you add up the obligations above that LESLIE owes CPG, Defendants argue that LELSIE's distributional interest in CPG is negative and LESLIE owes CPG money.
16. Defendants argue that Plaintiff's claim for Punitive Damages and Attorney Fees is without merit and improper. Punitive damages are not favored in the law. Defendant has cooperated throughout the case with discovery and has made settlement offers. Defendants have made a good faith argument regarding no amounts being due the Plaintiff for LESLIE's distributional share of CPG. Defendants also point out that the section of the Illinois LLC Act on which Plaintiff's rely for attorney's fees, costs, interest and punitive damages has been repealed and does not apply to this proceeding; that being 805 ILCS 180/35-65(d) and (e).

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17. Defendants argue that the unauthorized distributions to LESLIE prove conversion by LESLIE of those funds because LESLIE had no right to take those funds under the Illinois LLC Act.
18. Defendants argue that LESLIE's nonpayment of the losses of CPG amount to unjust enrichment, as do the unauthorized distributions.

COURT'S CONCLUSIONS:

1. The Court finds that the evidence supports that there are three (3) individual business entities and not one. There is not a Consolidated CPG. There are three businesses sharing office space and supporting the other businesses with resources and effort, not expecting anything in return. This was a family working together to support each other's endeavors. The three businesses are: LESTER's sole proprietorship, LESLIE's sole proprietorship, and CPG.
2. This finding is supported by substantial documentation and practice. The tax returns of all three entities support this conclusion, the ADVs support this conclusion, the AMAs support this conclusion and the spreadsheets indicating the fee division between the three entities for many years support this conclusion. The testimony from LESLIE's former clients regarding who they thought oversaw their account and the title of the account being with CPG was reasonably explained by LESTER; TD Ameritrade wanted only CPG on the statements, they did not want multiple account managers with the same address. Even with all accounts under CPG with TD Ameritrade, the fees were divided up between the three separate business entities pursuant to the spreadsheets.
3. The Court finds that CPG was created with the intent to bring in clients from Seminars. The fees from these clients would be paid into CPG. At the beginning, in 1994, the losses and the profits were shared equally between the seven (7) Members of the LLC. This arrangement quickly changed when CPG ran out of the money originally invested. Certain members chose to invest more money in the company and others did not. The membership shares did not change but the Capital Accounts were constantly adjusted. There was no explanation offered in testimony and the Tax Returns themselves indicate an arbitrary awarding of losses among the Members. It appears that the 1994 Agreement was being ignored or at least circumvented by other agreements of the Members. In practice the 1994 Agreement was not followed. The absence of an Operating Agreement confirms the fact that the day to day operations of CPG were conducted by the agreements of the Members. Agreements that will never be known because there are no Members left to testify.
4. Around 2002 and 2003, all the Members withdrew from CPG, except for LESTER and LESLIE. A new agreement was not drawn up during this time regarding profits and losses, even though this time period would have been the logical time to set the new course for CPG; but the only Members left in CPG were family (father and son) so it must have seemed unnecessary. The Court looks to the practice of the Members for their agreement. Every year, without fail, LESTER put money into CPG and obtained a loss to report on his personal income tax return. It was an advantage to LESTER to take all the expenses of the three

businesses and place them on the CPG tax return. This allowed for the substantial loss on the CPG tax return of which LESTER could take 100%. Even the Accountant stated that the allocation of profits and losses and payouts of Member interest can be whatever the Members agree. Without LESLIE here to testify, the Court is left with LESTER's testimony regarding the practice, and LESTER confirmed that this is what he did. His testimony on this issue expressed no regret and stated it in a practical, straightforward manner. In addition, LESTER's Capital Account continued to reflect his contributions over the losses he took, so that at a final sale or disposition of his interest, this capital account would have been considered and he would have been paid first.

5. BARBARA's position has always been that CPG was one company that included all the clients of all three businesses. This made it impossible to settle with Defendants on an amount of money for LESLIE's interest in CPG, which had the fewest clients. BARBARA based this position primarily on an offer (the "Paulson offer" contained in *Plaintiff Exhibit 1*) that came in a few days prior to LESLIE's death, which proposed to purchase all three businesses for a total estimated price of \$600,000, which was to be paid over time. BARBARA testified that LESTER offered her \$200,000 after LESLIE died for LESLIE's share of everything, and based that number on the Paulson offer for all three businesses because LESTER agreed that would be the value of CPG. LESTER testified that BARBARA and he were just discussing the offer by Paulson in this conversation and that he never offered any amount of money for LESLIE's share of CPG. The Court finds that BARBARA was sincere and credible in her testimony regarding her belief that this offer was made by LESTER; however, the Court places very little probative weight on this offer for purposes of valuing CPG.
6. Plaintiff's expert, Sook Lee, testified and presented a Report stating that if you valued the businesses as three (3) separate businesses, then the fair value of LESLIE's sole proprietorship would be \$139,000 and the fair value of CPG would be \$55,000 (*Plaintiff Exhibit 8*). LESLIE's share of CPG comes to \$27,500 under Plaintiff's Expert's analysis. Plaintiff's attorney has adopted Defendant's expert, Katherine Puffer's approach and has now come up with a higher number for the Consolidated CPG and LESLIE's sole proprietorship based on Katherine Puffer's method of evaluation for CPG but the expert did not draw any conclusions regarding LESLIE's sole proprietorship or a Consolidated CPG, so the suggested values are only conjecture and are not based on the expert's report. The Court will not consider these suggested, unsupported values.
7. This case is about CPG only, nothing has been pled regarding LESLIE's sole proprietorship. The fair value as proffered by Defendant's expert, Katherine Puffer, for CPG is \$73,000 (*Defendant Exhibit ZZ*). Both experts looked at the Paulson offer and the assignment of clients to CPG as stated in the AMAs and the assignment of fees to CPG. The Court finds it is appropriate to take the median value of the two expert valuations so that \$64,000 would be the value for CPG. LESLIE's 50% share would be \$32,000.
8. Defendant has argued for certain set offs from the value of CPG to which the Plaintiff is entitled. Those set offs include "unauthorized distributions" to LESLIE

and 50% of losses incurred by CPG over ten (10) years and the negative capital account of LESLIE.

9. The Court reviewed LESTER's evidence deposition regarding the "unauthorized distributions." Even when LESTER was testifying regarding monies that LESLIE withdrew from the accounts without full explanation, LESTER never insulted his son or expressed anger. In fact, LESTER said that LESLIE took it "because he needed it", and sometimes he would tell him about it and sometimes he might not. LESTER stated that it never changed their relationship and that it did not "amount to a breach of trust" between he and LESLIE. LESTER stated that "If he took money out of the account, it was just the same thing as I was giving it to him because I had to replace it." LESTER had given LESLIE many gifts of money over the years; this was just one more.
10. The Court finds that LESLIE did not owe any money to CPG under the Illinois LLC Act for "unauthorized distributions" because the LLC "could not pay its debts as they became due." CPG could pay its debts and in fact did pay its debts as they came due. LESTER paid in capital so that the LLC was always solvent. This was LESTER's choice and there is no evidence that there was any agreement otherwise. LESTER stated that he hoped to get paid back when CPG "had the money." When LESTER sold the business in 2015, LESTER received all the monies for CPG, because there were no other Members with which to divide the money. The Court also finds that these "unauthorized distributions" do not amount to conversion because the property was the property of the Members and was divided by Member agreement such that Defendants' rights to immediate possession of the property is not absolute or unconditional. The Court also finds that there is not unjust enrichment because there has been no showing of fraud, duress or undue influence by LESLIE regarding these distributions.
11. The Court also finds that LESLIE did not owe 50% of the losses incurred by CPG over the more than ten (10) year period of time where LESTER paid in capital and took 100% of the losses of CPG on his personal Tax Return. LESTER admitted in his testimony that this procedure offered him a tax advantage. In addition, LESTER took all the expenses of the three businesses on the CPG return, which his own Accountant said would not have been done if he had known. At the best, LESLIE might have been responsible for 50% of the expenses incurred only by CPG. This number is unknown, and the Court will not speculate. There was no evidence presented as to how to divide up the expenses for the three businesses, how that would impact the losses for CPG or how to calculate the tax advantage the losses gave to LESTER for ten (10) years; this is information that would have been important for any analysis of this issue by the Court. LESTER paid the money into CPG voluntarily and took the benefit of the deductions on his personal income Tax Return. LESTER did not testify that he expected LESLIE to reimburse him for 50% of the losses that were taken. The Court finds that LESTER and CPG are not entitled to reimbursement of the losses of CPG as recorded on the tax returns every year from LESLIE's share of CPG. This includes the spurious argument on additional expenses LESTER made over the years for software and other office expenses. LESLIE is not present to testify as to what expenses may or may not have been agreed to

by him. It is clear from testimony that LESTER and LESLIE did not agree on all expenditures. Once again, LESTER may have made this request for reimbursement in his Counter-Claim, but past practice and his own testimony do not indicate that reimbursement was important to LESTER or expected. Members in an LLC can agree to divide profits, losses and expenses as they wish. The Court also finds there is no conversion or unjust enrichment here for reasons stated above in Paragraph 10.

12. The Court's findings on the "unauthorized distributions" and payment of losses and expenses are bolstered by LESTER's testimony. LESTER stated that he had no objection when LESLIE used LINDA or Lisa Lipin to assist him, even though they worked for and were paid by LESTER. LESTER said he had "discussions" not arguments about expenses with LESLIE and that LESLIE disagreed with certain expenses. LESTER never changed his statement that certain clients were LESLIE's clients, even when the argument could be made that LESTER had the AMA with that client because he was the only RIA; LESTER made sure that LESLIE obtained the fee. In the early years, LESTER even gave LESLIE some clients according to his testimony. LESTER testified that he considered LESLIE "his equal" and that when LESLIE was dealing with LESTER's clients, LESTER "knew they were in good hands."
13. The remaining offset from LESLIE's share of CPG, that Defendants request, would be the negative capital account which was written off at the end of 2014 on the tax return. Even though it was written off, it does not mean that it should not be considered when determining the fair value of LESLIE's share of CPG on his date of death. Therefore the \$12,293 that was LESLIE's negative capital account balance should be subtracted from the 50% share of CPG at LESLIE's date of death in making the determination of fair value. The Court finds that LESLIE's share of CPG is $\$32,000 - 12,293 = \$19,707$.
14. LESTER's testimony was focused on this lawsuit and was defensive about many issues but the Court was struck by his consistent refusal to say anything negative about his son, LESLIE. In fact, LESTER painted a picture of a man who greatly respected and loved his son. LESTER helped LESLIE with gifts, clients and advice. LESTER does appear to be "gruff" as one witness stated but also seemed dedicated to his children and making sure that their needs were met.
15. LESTER's testimony does not paint the picture of a man who expected LESLIE to reimburse him for expenditures he made if LESLIE did not agree with him, or a man who expected LESLIE to reimburse him for the losses of CPG, or would penalize LESLIE for taking money as he needed it. This was a family business where LESTER was doing a lot of the heavy lifting so that his children would thrive. His testimony indicates his pride and love for LESLIE.
16. The Court finds that LESTER did not owe LESLIE any fiduciary duty as a member of CPG after LESLIE died except to buy out LESLIE's interest pursuant to statute. There was not a buy/sell agreement that may have extended the fiduciary relationship. The clients that were CPG's clients could no longer be shared with LESLIE after LESLIE's death due to the restrictions on receipt of investment advisory fees under the law. All the arguments about LESTER stealing LESLIE's clients, changing the locks, hiding the files and not involving

BARBARA in the future sale of the business amount to nothing. It is unfortunate but LESLIE's interest in CPG terminated on the date of his death.

17. Any conversion argument fails regarding CPG as well because once again LESLIE's interest in CPG ended when he passed and the only issue remaining was the fair value of his share on that date.
18. There is also a fiduciary argument and conversion argument being made regarding fees that LESLIE earned in the third quarter of 2014 prior to his death. There was very little testimony and evidence offered on this point, even though it was a large part of the Complaint. Counts I through IV all refer to the advisory fees that were being held improperly by LESTER and CPG. The only testimony of any consequence appeared through BARBARA who testified that LESTER mentioned holding approximately \$17,000 for LESLIE in fees in his Discovery Citation deposition and that he was not sure what to do with it. The Discovery Citation deposition was entered into evidence by stipulation. This issue could have used more exploration, but the Court refers to *Defendant Exhibit KKK* for the 3rd Quarter Fees ending 9/30/14 that was admitted into evidence by stipulation. This is the breakdown of the advisory fees each business earned in the 3rd Quarter. Unfortunately for the Defendant there are no dates of when the fees were earned, considering that LESLIE passed in August of 2014, before the quarter ended. Unfortunately for the Plaintiff, no argument has been made beyond the \$17,000 to which LESTER testified, even though the Exhibit may indicate more than \$17,000 in fees assigned to LESLIE. The Court uses the Exhibit to substantiate that the \$17,000 amount of advisory fees owed to LESLIE as testified by LESTER are supported by the Exhibit, which they are.
19. Defendant argues that the advisory fees are not owed because LESLIE was ill and was no longer providing the services for which he could get paid in the third quarter of 2014. Defendant suggests that it is against the law to pay investment advisory fees to someone who did not do the work. The Court declines to follow this argument. LESTER's own testimony indicates that LESTER and LESLIE would provide advisory services for each other's clients when the other one was unavailable, and it did not change the fee distribution. LESLIE was entitled to his advisory fees until his date of death whether he personally performed the work or not, as this was the practice of the businesses and is not inconsistent with the law so long as an RIA was involved, which LESTER was.
20. The Court finds that LESTER and CPG owe LESLIE the sum of \$17,000 for advisory fees earned by LESLIE prior to his death and that those funds were improperly withheld from LESLIE's estate.
21. The Plaintiff's arguments for attorney's fees and costs and interest and punitive damages rely heavily upon the actions taken by LESTER after LESLIE died. The court has found LESTER owed no duty to LESLIE after his death. LESTER's only obligation was to pay LESLIE his membership shares of CPG, which now is valued at less than \$20,000. This amount was never agreed upon by either side. There was conflict and disparate views due to inconsistent records; such as TD Ameritrade, the tax returns and the paying out of advisory fees. The main confusion between the parties resulted from a lack of an Operating Agreement between family members, which allowed the family members to do as they

wanted. The Court finds that the Defendant is not the cause of the delay in this matter and that the cause for the delay was the lack of clear documentation of the three separate entities, how they shared expenses, how they awarded fees and so on. A clear buy/sell agreement or even a clear Operating Agreement would have solved most of the issues in this case; but these were family businesses and families have their own way of functioning.

22. In addition, the Court finds that the Illinois LLC Act Sections 35-60 and 35-65 were in effect at the time of the filing of the action and that Section 35-65(d) and (e) come into play now that a value of CPG has been determined. Under the Act any attorney's fees and costs and expense awards are left to the discretion of the Court. Only the "interest" on the Judgment award is mandatory.
23. Taking the above into consideration, the Court finds that neither party acted arbitrarily, vexatious, or not in good faith. Both the Plaintiff and the Defendants had valid arguments and a good faith basis upon which to make the arguments they have made. The animosity between BARBARA and LINDA was evident but not to the degree of an "evil motive" or "reckless indifference" or other outrageous conduct that would allow for attorney's fees, costs, expenses or punitive damages for the Plaintiff.
24. This is a very sad case that has torn apart the remaining family members of a once close family. LINDA's testimony indicated that she does not trust or like BARBARA and that she holds her personally responsible for the lack of contact between she and LESLIE in the last years of his life and at the very end when he was in the hospital. LINDA did not disparage LESLIE; she refused to say that he stole anything. It was evident that LINDA loved LESLIE. It was also evident that LINDA has taken certain positions to protect her father, LESTER. LINDA did change her testimony from her deposition regarding the legal impact of the AMAs and clearly stated it was because the legal position of the Defendants was explained to her by the attorneys afterwards. This did impeach LINDA's credibility. However, the important sections of LINDA's testimony regarding the operation of the three (3) businesses is supported by other evidence. The Court does not find that her animosity towards BARBARA has extended this litigation or is a basis for punitive damages.
25. BARBARA was caught in some inconsistencies as well. She said that she witnessed conversations that at her deposition she had said she had not. These were important discrepancies in her testimony and BARBARA's credibility was impeached. However, BARBARA was very polite and very earnest in what she believes. As much as LINDA is protecting her father, LESTER's legacy, BARBARA is trying to protect LESLIE's. LESLIE worked most of his career with his father, LESTER. He would not have done so if it was not profitable for him. LESTER's generosity was clear and everyone testified that LESTER and LESLIE loved each other and were a typical father and son relationship; minor upsets but always backing each other up. It is difficult for BARBARA to accept that LESLIE worked all those years and there is nothing to show for it. In addition, BARBARA has been very hurt by LINDA's actions, especially leaving her daughter out of LESTER's Obituary as his granddaughter. BARBARA is very defensive on behalf of her daughter and her husband. It is understandable. The actions taken

by both BARBARA and LINDA, while understandable, are also very unfortunate and sad and have cost each of them dearly; emotionally and financially.

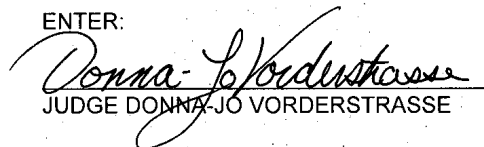
26. The Court finds all other witnesses credible, especially Lisa Lipin, the two Accountants and the two Business Valuators, who do not have a personal stake in this matter. Their testimony was probative and helpful. The friends of BARBARA who were clients of LESLIE's were honest but of little probative value; each of them admitting that they did not know how the companies were run. Their testimony of LESTER soliciting them does not indicate any wrongdoing on LESTER's part.
27. The Court finds that the Plaintiff's complaint does not request that the Defendant LESTER pay for the value of LESLIE's sole proprietorship. It does not fall under the Illinois LLC Act now that the Court has found three separate entities. Even though a value has been presented for LESLIE's sole proprietorship, there is no legal basis presented in the pleadings upon which the Court can award this value. The Court is bound by the pleadings as is the Plaintiff.

IT IS HEREBY ORDERED:

- A. The Court finds in favor of the Plaintiff and against the Defendants on Count V of the Plaintiff's Complaint in the amount of \$19,707 plus pre-Judgment interest from the date of death of LESLIE Mandelstein through the date of this Ruling at 5% per annum, and awards Judgment against LESTER Mandelstein and CPG, LLC for the amount of same.
- B. The Court finds in favor of the Plaintiff and against the Defendant on Count IV of the Plaintiff's Complaint in the amount of \$17,000 plus pre-Judgment interest from the date of death of LESLIE Mandelstein through the date of this Ruling at 5% per annum, and awards Judgment against LESTER Mandelstein for the amount of same.
- C. The Court finds in favor of Defendant and against the Plaintiff on Counts I, II, and III of Plaintiff's Complaint.
- D. The Court finds in favor of the Plaintiff and against Defendants on all Counts of the Counter-Claims by LESTER Mandelstein and CPG, LLC and on all Affirmative Defenses raised except the Second Affirmative Defense which supports the proposition that Capital Accounts must be considered in determining fair value.
- E. Each party to pay their attorney's fees and costs.
- F. No Punitive Damages are awarded.

Dated at Waukegan, Illinois
this 16th day of November, 2017.

ENTER:


JUDGE DONNA JO VORDERSTRASSE

C 913

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

In Re Estate of Leslie Mandelstein, Deceased)
_____)
BARBARA MANDELSTEIN, as Independent)
Executor of the ESTATE OF LESLIE)
MANDELSTEIN, Deceased,)
Plaintiff,)
v.)
LESTER MANDELSTEIN and)
CUSTOM PLANNING, LLC,)
Defendants.)

FILED
DEC 14 2017
Eva Cerantoni-Walsh
CIRCUIT CLERK

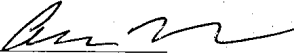
Case No. 14 P 899

Supplemental Proceeding

NOTICE OF APPEAL

An appeal is taken from the Order or Judgment described below.

1. Court to which appeal is taken: 2nd District Appellate Court, Appellate Court Building, 55 Symphony Way, Elgin, Illinois 60120
2. Name of appellant and address to which notice shall be sent.
Barbara Mandelstein, Executor of the Estate of Leslie Mandelstein
c/o Alexander N. Loftus
Stoltmann Law Offices
10 S. LaSalle, Suite 3500
Chicago, Illinois 60611
3. Name and address of Appellant's Attorney on appeal.
Alexander N. Loftus
Stoltmann Law Offices
10 S. LaSalle, Suite 3500
Chicago, Illinois 60611
4. An appeal is taken from the order or judgment described below: Final Judgment Entered November 16, 2017.
5. Name of judge who entered the judgment/order being appealed: Donna-Jo Vordestrasse
6. Relief sought from Reviewing Court: Reverse and remand judgment entered November 16, 2017 and all orders made final therein.

SIGNED: 
Alexander N. Loftus

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LAKE COUNTY, ILLINOIS

BARBARA MANDELSTEIN AS INDEPENDENT
EXECUTOR OF THE ESTATE OF LESLIE
MANDELSTIEN DECEASED

Plaintiff/Petitioner

Appellate Court No: 2-17-1009

Circuit Court No: 2014P000899

Trial Judge: DONNA-JO VORDESTRASSE

v.

LESTER MANDELSTEIN AND CUSTOM
PLANNING LLC

Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

BARBARA MANDELSTEIN AS INDEPENDENT
EXECUTOR OF THE ESTATE OF LESLIE
MANDELSTIEN DECEASED

Plaintiff/Petitioner

Appellate Court No: 2-17-1009

Circuit Court No: 2014P000899

Trial Judge: DONNA-JO VORDESTRASSE

v.

LESTER MANDELSTEIN AND CUSTOM
PLANNING LLC

Defendant/Respondent

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Transaction ID: 2-17-1009
File Date: 2/14/2018 3:18 PM
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APPELLATE COURT 2ND DISTRICT

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