

# The Danger of Oral Partnership Agreements

by Robert Levy on October 8, 2013

You don't technically need to draft a partnership agreement when forming a New York partnership, but it is certainly advisable. As highlighted in a recent New York appellate decision, having a written contract in place can avoid a lot of legal headaches down the road.

In *Gelman v. Buehler*, the Court of Appeals of New York ruled that there was no breach of contract when one party withdrew from a partnership created by an oral agreement. The decision rested on a provision of the New York Partnership Law, which states that a partnership formed by oral agreement may be dissolved unilaterally if "no definite term or particular undertaking is specified" in the underlying agreement.

Recent business school graduates plaintiff Geoffrey Gelman and defendant Antonio Buehler decided to form a partnership with the goal of purchasing a business and later selling it for profit. The partnership was formed solely by oral agreement. After several months of pursuing investors, Buehler withdrew from the venture after Gelman refused his demand for majority ownership of the partnership. In the lawsuit that followed, the parties disputed whether the oral partnership agreement could be terminated unilaterally.

The appeals court ultimately concluded that the partnership agreement failed to satisfy the "definite term" or the "particular undertaking" requirement under the Partnership Law. As noted by the panel, "the parties were to solicit investments for an indefinite length of time; conduct an open-ended (possibly two-year) search for an unidentified business in an unknown business sector or industry; secure additional capital investments over the course of an unspecified period of time; and then purchase and operate the enterprise for an indeterminate duration (perhaps four to seven years) until a liquidity event would hopefully occur." Given the lack of specificity, Buehler was free to withdraw.

In light of the court's decision, below are some of the key provisions that should be included in any partnership agreement:

- Roles and duties of partners. First and foremost, the agreement should detail the obligations of each partner, including time, labor, and financial contributions. The agreement should also detail how the ownership percentages will be allocated.
- Financial allocations to partners. The partnership agreement should specify the allocation of profits, losses, and draws, as well as the timing of such transactions (i.e. quarterly vs. year end).
- Legal authority to act on behalf of the partnership. Absent an agreement that states otherwise, any partner can create legal obligations on behalf of the partnership. In order to require partners to obtain the others' consent before acting to bind the partnership, a provision should be included in the partnership agreement.

- Management decision-making. To avoid disputes, the agreement should outline the management duties of each partner, and what actions will need a majority vote or unanimous consent.
- Dispute resolution. The partners should specify how deadlocks or conflicts will be resolved. Partnerships agreements frequently call for alternative dispute resolution, including mediation or arbitration.

If you have any questions about these cases or would like to discuss the legal issues involved, please contact me, Robert Levy, or the Scarinci Hollenbeck attorney with whom you work.