



Albany Litigation Group Secures Substantial Settlement at Trial of Hotly Contested Business Divorce

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In a “business divorce” proceeding involving unsettled issues of law regarding “discounts for lack of marketability,” a Cullen and Dykman litigation team—including lead trial counsel Nicholas Faso, Christopher Buckey, and Cecilia Ehresman—secured a substantial settlement in favor of their client. Cullen and Dykman represented a 40% shareholder in a lawsuit to dissolve a real estate holding company based on the other shareholders’ alleged looting of corporate assets and minority oppression. Instead of opposing the lawsuit on the merits, the other shareholders elected to purchase the client’s stake in the company for “fair value” under Business Corporation Law § 1118. A trial was scheduled to determine the issue of fair value based on testimony from real estate appraisers and business valuation experts.

In an attempt to reduce the cost of the buy-out, the other shareholders sought an unprecedented 35% marketability discount on the value of the client’s shares. Although marketability discounts have been allowed by the Court of Appeals, there has been much disagreement among the lower courts as to when such discounts should apply, particularly in the case of holding companies. Cullen and Dykman engaged Z. Christopher Mercer, one of the nation’s foremost experts on business valuations and discounts, to help advance the argument that a marketability discount of 0% was warranted in this case.

With potential trial outcomes ranging from \$1.5 million to \$3.1 million, the stakes were high for our client. After counsel delivered opening statements at the start of a planned week-long trial, the shareholders agreed to settle the case in the client’s favor for \$2,762,500.

Attorneys

- Christopher E. Buckey
- Nicholas J. Faso