

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIELLE EPSTEIN, JASON GOODMAN,
And WARD GUILDAY,

Petitioners,

Index No. _____/2020

-against-

SECAUCUS INVESTORS, LLC,

Respondent.

**PETITION IN SUPPORT OF A TEMPORARY RESTRAINING ORDER
AND A PROVISIONAL REMEDY IN AID OF ARBITRATION**

Petitioners Danielle Epstein, Jason Goodman, and Ward Guilday, by their attorneys, respectfully submit this Petition in support of their application for a temporary restraining order and pursuant to Article 75 of the CPLR, a provisional remedy in aid of arbitration against Secaucus Investors, LLC (“Secaucus”).

PRELIMINARY STATEMENT

1. This is an action seeking preliminary relief in aid of arbitration, arising from Secaucus’ fraud and outright theft of Petitioners’ investment of \$1.25 million. Secaucus was formed to provide a loan via a line of credit to non-party Harmony (defined below). Harmony was a not-for-profit start-up pharmaceutical company with a single drug, medical marijuana. It was one of six medical marijuana companies licensed pursuant to law in New Jersey.

2. After loaning millions from 2013 to 2017, and prior to Plaintiff’s investment, Harmony still was not yet operational. It had no revenue and required significant additional

capital. Secaucus, however, funded almost entirely by only one of its members, declined to invest additional money in Harmony, nearly causing Harmony to go out of business.

3. Rather than loan additional money pursuant to the line of credit, Secaucus obtained money from the Petitioners. Each of the Petitioners purchased a "Participation Interest" in Secaucus' line of credit extended to Harmony via a written "Participation Agreement." Petitioners' money was wired to Secaucus' bank account, which was then in turn loaned to Harmony, saving the business.

4. Petitioners recently learned that Secaucus is involved two separate litigations: one with Harmony, and another with a non-party who also purchased a Participation Interest. Secaucus' position in those litigations are astonishingly false. Secaucus falsely claims that it is unaware of Petitioners' investments. Secaucus refuses to recognize that Petitioners' Participation Agreements are valid and binding as part of its efforts to steal Petitioners' money.

5. Secaucus' own documents put the lie to its position. In Secaucus' own writings, it is crystal clear that Secaucus was both aware of, and approved of, Petitioners' purchase of their participation interests (and, of course, received Petitioners' money).

6. Even worse, once Harmony became profitable, Secaucus arranged for approximately \$2.6 million of Harmony's loan repayments to be sent both to Secaucus and to the majority member of Secaucus (the member who, upon information and belief, almost entirely funded Secaucus prior to Petitioners' investments), rather than paying Petitioners their pro-rata portion of the loan repayments as required by the Participation Agreements.

7. In short, despite (a) having executed written Participation Agreements with each of the Petitioners, (b) having received \$1.25 million from the Petitioners into its bank account, (c) loaning the \$1.25 million received from the Petitioners to Harmony, thereby saving Harmony

from going out of business, and (d) being fully aware of Petitioners' investment, including through documents Secaucus itself provided in its litigation against Harmony, Secaucus takes the position that Petitioners' investments do not exist. Such theft gives rise to numerous causes of action against Secaucus, including breach of the Participation Agreements (which includes an attorneys' fees and costs shifting provision), fraud, conversion, unjust enrichment, constructive trust, breach of the covenant of good faith and fair dealing, and an accounting, among others.

8. The Participation Agreements are governed by New York law and contain an arbitration clause, requiring arbitration of all disputes in New York, New York. Petitioners thus bring this proceeding pursuant to CPLR 7502(c) for either an injunction or, in the alternative, attachment in aid of arbitration (both grounds are satisfied here). Without such preliminary relief, the arbitration award to which the Petitioners are entitled may be rendered ineffectual.

9. In addition, a temporary restraining order is required. Secaucus' actions to-date give rise to the very substantial likelihood that while this Court is considering this application for a provisional remedy in aid of arbitration, that Secaucus will assign or otherwise dispose of its interest in its loan to Harmony (its only asset and source of income) to a non-party, thereby completing its theft of Petitioners' \$1.25 million plus accrued interest.

10. Based on its actions to-date, there is the very real concern that if Secaucus becomes aware of this application for a temporary restraining order, that it will effectuate the disposal of its sole source to pay Petitioners' expected arbitration award. On the other hand, an ex-parte temporary restraining order will cost Secaucus nothing. Secaucus has no ongoing operations, and thus a temporary restraining order will have no impact on its "business." Such an order will simply maintain the status quo and prevent Secaucus from completing its theft, while still providing Secaucus an opportunity to defend.

THE PARTIES

11. Danielle Epstein is a resident and domiciliary of New York County, NY. Pursuant to a written agreement dated August 29, 2017, she wired \$500,000 to Secaucus in satisfaction of the purchase price of a participation interest in a loan which Secaucus made to Harmony.

12. Jason Goodman is a resident and domiciliary of Delaware County, NY. Pursuant to a written agreement dated November 8, 2017, he wired \$500,000 to Secaucus in satisfaction of the purchase price of a participation interest in a loan which Secaucus made to Harmony.

13. Ward Guilday is a resident and domiciliary of the State of Pennsylvania. Pursuant to a written agreement dated September 15, 2017, he wired \$250,000 to Secaucus in satisfaction of the purchase price of a participation interest in a loan which Secaucus made to Harmony.

14. Upon information and belief, Secaucus is a limited liability company formed under the laws of the State of New Jersey, having an address of 600 Meadowlands Parkway, Suite #15, Secaucus, New Jersey.

FACTS

Harmony and Secaucus

15. On or about September 12, 2013, Secaucus and the United States Division of the International Foundation a/k/a Foundation Harmony (“Harmony International”) and Harmony Foundation of New Jersey, Inc. (“Harmony Foundation” and, with Harmony International, “Harmony”) signed a Line of Credit Promissory Note and Line of Credit Security Agreement, as amended from time to time (the “Loan”).

16. The Loan carries an interest rate of 18% per year and matures on July 27, 2022.

17. Harmony Foundation is a not-for-profit company formed for the purpose of growing and dispensing medical marijuana in the State of New Jersey.

18. Secaucus is a New Jersey limited liability company formed for the purpose of making an investment in Harmony. Upon information and belief, it has no real operations other than to administer the Loan, and has no assets other than the receivable on account of the Loan.

19. Pursuant to the underlying Loan documents (“Loan Agreement”), Secaucus originally committed to lend Harmony up to \$2 million. The Loan Agreement was amended on September 21, 2016, increasing the maximum amount of the loan to \$6.5 million.

Harmony Runs Out of Money

20. Subsequent to the first amendment to the Loan Agreement, Secaucus was either unable or unwilling to provide any further funding to Harmony.

21. Harmony, however, was not yet operational, and needed additional funds to complete the building of its facility and otherwise set up its highly regulated business. It had no revenue, since without the completion of its facility it was unable to obtain a “license to dispense.”

22. As a result, Harmony was in imminent danger of folding before it started. In order to prevent Harmony from going out of business, Secaucus and Harmony amended the Loan Agreement on August 29, 2017, increasing the maximum amount of the loan to \$10 million.

23. In connection with the second amendment to the Loan Agreement, the Petitioners were approached about investing in the Loan. The Petitioners thereafter invested through Participation Agreements. Under the Participation Agreements, the Petitioners paid a collective sum of \$1.25 million to Secaucus, which was wired to its bank account. That money

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