

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FELIX NEDLER, FRIDA VAYSMAN,	:	CIVIL ACTION
INNA PROSHAK, Individually and	:	
Derivatively on behalf of CIRCLE OF	:	
FRIENDS ADHC, INC., and STEVEN	:	NO. 05-6113
PROSHAK, Individually and Derivatively	:	
on behalf of ODESSA PARTNERS, LLC	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
VICTORIA and ALAN VAISBERG, h/w,	:	
JOSEPH AND LANA MANDALE, h/w,	:	
MICHAEL and ELINA ZAVERUKHA,	:	
MIKHAIL SLOBODSKOI,	:	
GRACE ADULT DAY HEALTHCARE,	:	
INC., LJ CAB CO., INC.,	:	
METROPOLITAN TRANSPORTATION,	:	
CO., LLC. , TWO STAR CAB CO.,	:	
and ODESSA PARTNERS, LLC.	:	
Defendants.	:	

ORDER & MEMORANDUM

ORDER

AND NOW, this 18th day of April, 2006, upon consideration of Plaintiffs' Motion To Compel Production To Enforce Section 1508 of the Pennsylvania Business Corporation Law (Document No. 25, filed February 20, 2006), and the Response to Plaintiffs' Motion to Compel Production to Enforce Section 1508 of the Pennsylvania Business Corporation Law (Document No. 31, filed March 6, 2006), and good cause appearing, for the reasons set forth below, **IT IS ORDERED** that the Plaintiffs' Motion To Compel Production To Enforce Section 1508 of the Pennsylvania Business Corporation Law (Document No. 25, filed February 20, 2006) is **GRANTED** as follows:

1. It is **ORDERED** that, within five business days of this Order, Circle of Friends ADHC, Inc., and Odessa Partners, LLC shall make available for inspection all operational records from January 1, 2004 to the present.

2. It is **FURTHER ORDERED** that, on or before May 1, 2006, Circle of Friends ADHC, Inc., and Odessa Partners, LLC shall make available for inspection all financial records from January 1, 2004 to the present.

MEMORANDUM

I. INTRODUCTION

Presently before the Court is the Plaintiffs' Motion To Compel Production To Enforce Section 1508 of the Pennsylvania Business Corporation Law (Document No. 25, filed February 20, 2006) ("Motion To Compel"). For the reasons set forth in this Memorandum, the motion is granted.

II. DISCUSSION

Plaintiff Steven Proshak alleges that he is a shareholder of Odessa Partners, LLC ("Odessa"). Compl. at ¶ 4. Plaintiffs Nedler, Vaysman, and Inna Proshak allege that at all times relevant to this action, they have been, and continue to be, shareholders of Circle of Friends ADHC, Inc. ("Circle of Friends"). Id. at ¶¶ 1-3.¹

Plaintiffs seek to inspect the operational and financial records of Circle of Friends and

¹ The relationships among plaintiffs, defendants, and Circle of Friends is outlined in the "Background" section of this Court's Memorandum dated April 18, 2006, which denied defendants' Motion to Dismiss.

Odessa from January 1, 2004 to the present. Specifically, plaintiffs seek the following from both corporations:

1. QuickBooks, if available, and if not then all accounting records-cash disbursements, receipts, etc.;
2. Bank statements, reconciliations, and cancelled checks for all accounts open during the period;
3. Payroll records including payroll tax returns, job descriptions, W-4's and all payroll data;
4. Any 1099's issued to contractors;
5. Explanation of benefits from all payers;
6. Attendance records for all participants;
7. Correspondence from any State paying or certifying agency;
8. All leases that the company has entered into;
9. Backup documentation for all balance sheet items;
10. Financial statements issued by any outside accountants;
11. Tax returns since the entity's formation;
12. Correspondence from the IRS and any State taxing authority;
13. Any loan or note documentation for company debts; and Board of Directors/Shareholder minutes and shareholder agreements.

Motion To Compel at ¶ 15. Plaintiffs make their demands pursuant to Section 1508 of Pennsylvania Business Corporations Law.²

² That section provides, in relevant part:

(b) **RIGHT OF INSPECTION BY A SHAREHOLDER.**-- Every shareholder shall, upon written verified demand stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the share register, books and records of account, and records of the proceedings of the incorporators, shareholders and directors and to make copies or extracts therefrom

. . . .
(c) **PROCEEDINGS FOR THE ENFORCEMENT OF INSPECTION BY A SHAREHOLDER.**-- If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to subsection (b) or does not reply to the demand within five business days after the demand has been made, the shareholder may apply to the court for an order to compel the inspection. The court shall determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the shareholder to inspect the share register and the other books and records of the corporation and to make copies or extracts therefrom, or the court may order the

Defendants do not contest that “Frida Vaysman and Steven Proshak have rights as shareholders to inspect the books and records of” Circle of Friends and Odessa. See Def. Mem. Ans. 1. Defendants, on behalf of Circle of Friends and Odessa, have “agreed to immediately produce the available operational records . . . and make all requested financial records available by May 1, 2006 when the corporations’ accountant, William Larkin, CPA, becomes free from the obvious pressures of tax season on May 1, 2006.” Id. at 1. See also Response at ¶ 5 (“it is averred that the Responding Parties have offered to meet Ms. Vaysman’s right of inspection”); id. at ¶¶ 11-12 (“Responding Parties, through their attorney, agreed to permit an inspection of the operating and financial records of COF [Circle of Friends]”); id. at ¶ 17 (“counsel for the Responding Parties . . . agreed to produce at the convenience of [plaintiffs’ counsel], the following requested operating records: the attendance records for all COF [Circle of Friends] participants; correspondence from any state paying or certifying agency; all leases that the company has entered into; and Board of Directs/Shareholder minutes.”); id. at ¶ 18 (“The requested inspection of the records of COF [Circle of Friends] and Odessa Partners can be made by Frida Vaysman and Steven Proshak or their properly authorized representative . . . and the

corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the shareholder first pay to the corporation the reasonable cost of obtaining and furnishing the list and on such other conditions as the court deems appropriate.

Where the shareholder seeks to inspect the books and records of the corporation, other than its share register or list of shareholders, he shall first establish:

- (1) That he has complied with the provisions of this section respecting the form and manner of making demand for inspection of the document.
- (2) That the inspection he seeks is for a proper purpose.

15 Pa. C.S. § 1508.

operational records can be inspected at the convenience of the shareholders or their representatives.”).

Accordingly, within five business days of this Order, Circle of Friends shall make available for inspection by Frida Vaysman all operational records from January 1, 2004 to the present. On or before May 1, 2006, Circle of Friends shall make available for inspection by Frida Vaysman all financial records from January 1, 2004 to the present.

Likewise, within five business days of this Order, Odessa shall make available for inspection by Steven Proshak all operational records from January 1, 2004 to the present. On or before May 1, 2006, Odessa shall make available for inspection by Steven Proshak all financial records from January 1, 2004 to the present.³

III. CONCLUSION

For the foregoing reasons, the Motion to Compel is granted.

BY THE COURT:

JAN E. DUBOIS, J.

³ The Court notes that defendants have agreed to make available for inspection by Frida Vaysman and Steven Proshak the operational and financial records of Circle of Friends and Odessa, respectively, provided that Vaysman and Steven Proshak make a “proper demand” and there is “the appropriate appointment of an inspecting representative.” See Memorandum Supporting the Answer of Responding Parties to Motion to Compel Production To Enforce Section 1508, at 1; see also Response to Plaintiffs’ Motion to Compel Production to Enforce Section 1508 of the Pennsylvania Business Corporation Law at ¶¶ 1, 6, 7, 11, 12, 13 (arguing that plaintiffs’ demands upon Circle of Friends and Odessa were defective). The Court rejects the objections to the forms of the demands on the present state of the record.