

Family Business Matters

Confidential Information for Minority Shareholder in a Family Business

You have finally decided to talk to a lawyer about how to protect yourself from being squeezed out of your rightful share of your family's business. You know that your brothers have been lying to your father about the business operation, and that they have been distributing profits as salary to prevent you from getting your percentage. Your father backs them up because he doesn't want to admit the truth: that your brothers are lazy, sleazy and incompetent. One brother has been a drug addict and an alcoholic off and on since the Desert Storm war, yet your father continues to let him draw a paycheck, whether or not he shows up at the office or does anything when he gets there. Your other brother is just greedy and lazy and has manipulated your father for years into turning against you. At this point, you don't care about the family dynamics. You are better off not sitting at the same Thanksgiving table. Your kids are grown, so it doesn't much matter if they don't have quality time with grandparents, uncles, and cousins. At this point, it's about money for you and your spouse. You have to think about putting away money for retirement, and your business fortunes haven't allowed any significant savings over the past two decades because of the way the rest of the family has treated you. Now, you need to get your fair share. You want to show them that they can't force you out, not after all of your hard work.

Your father would say that the problems started twenty years ago when he decided to form a corporation for his small sand and gravel business. You were twenty-eight, out of college and the military, and with a fresh CPA degree. (You consider yourself the classic dutiful first born child.) Your brothers were in their early twenties. Your father had accumulated a number of parcels of nearby land with various grades of sand and stone. He produced gravel in different grades and sold it to road builders and developers in the area. Your father gave each of his three children a 13 1/3% share in the corporation. He and your mother each retained a 30% share, or 60% total. The three children started working in the business. A few years later, the corporation took the opportunity to buy a large parcel of land across the street from its office, with a large commercial warehouse and an additional open space. A year or so later, the business began acquiring and refurbishing heavy road equipment machines, for rental to developers and road builders.

When it became obvious that the siblings did not work well together on a day-to-day basis, each was given a separate area to manage. You took over the commercial warehouse. One brother remained at the helm of the sand and gravel operation, with your father. The other brother took over the business of acquiring, refurbishing and renting or selling heavy construction equipment. Each entered separate but identical agreements with the corporation requiring each to pay a certain "rental and corporate fee" for the land, buildings, and certain central services, but permitting each to keep the net profits from your own operations. It was understood that the "rental and corporate fee" was to be paid to your parents as "salary" as they slowly retired from

active participation. The corporation guaranteed each sibling a minimum salary of only \$35,000 from their separate operations.

When you first took over the commercial warehouse, you knew profits would be low for a while. The operation had not been marketed. The warehouse was in dire need of repair and updating. For the first few years, you earned barely above the minimum. You worked nights and weekends, doing a lot of the labor yourself. Finally, you started to generate more significant profits, a few years in the \$60 - \$75,000 range, then up to \$100,000 and then \$125,000 to \$130,000 in the five years before you left the family company, which was five years ago.

Five years ago, conditions at the business became intolerable. You had long provided accounting services for the company, because of your CPA background. The company paid you a fee of \$5,000 annually for this service, but it required tremendous time largely due to your brothers' incompetence and sloppy business practices. It also drove you nuts that they would buy fancy sports cars and charge it to their businesses. They never seemed to invest in proper computers and maintenance on their physical plants. They followed the come in "late, leave early" school of management, teasing you about being the "family nerd."

You reached the boiling point when, in one week, your father turned down your request that the company hire a part-time bookkeeper, and then accused you of trying to sneak the cost of your warehouse roof into company expenses (instead of against your own operation). Nothing could be further than the truth. As a matter of routine, all of the sub-businesses received advances from the corporation, to be paid back as receipts came in. December is a typically slow month, and you simply caused the roof funds to be advanced. You became irate that your father would question your integrity, when you are the only one of your siblings who can be trusted to work hard and honestly. You were certain that your brothers had poisoned your father against you and you stormed out, tossing the warehouse keys. You didn't come back for two weeks, when you found that the locks had been changed, and a new manager hired for the warehouse. You were forced out of the job.

You and your family just managed to scrape by as you took on small bookkeeping tasks for the next several years. You worked for a while as assistant manager in a small hotel. You were not on speaking terms with any of your family. They did not send any of the company's profits to you, despite the fact that you still had 13 1/3% and it looked like the business was doing well.

Approximately a year ago, the business put the commercial warehouse property up for sale. They had subdivided the land and put up a fence to separate the equipment rental operation. You and your wife decided to borrow some funds, pledging your house as collateral to purchase the

warehouse. You worked through an agent, so that the family would not know that you were the purchaser. Your agent had heard the property was selling for \$500,000 - \$600,000, but your father insisted on the full \$600,000 in the negotiations. You strongly suspect that he had figured out you were the buyer. At that point, it didn't bother you to pay a little bit more, as you assumed that company would distribute the proceeds and you would receive your fair share, or at least \$80,000. The end of the fiscal year passed. You received nothing.

You have been working like a dog to get the warehouse back in shape, invest in marketing, etc. It was really run down after your brothers' five years of mismanagement. Slowly, the profits are getting better, but your take home pay hasn't yet reached \$60,000 a year.

You recently heard that your father is ill with leukemia. You know that is often controllable with medication. Your oncologist friend has told you that a man of 77 with his type of leukemia, under appropriate medical management, is still more likely to die of other natural causes. While feeling sympathy due to his illness, you remain angry with your father. You believe that he should set your siblings straight on how a business should be run. Also, as the majority shareholder (with your mother), he has the power to insure that proper distributions are made.

You decided to consult with a lawyer to learn your rights, and come up with a strategy to get what you are owed. You called a local attorney. Though relatively young, the attorney is rapidly gaining a reputation in your community, where he opened an office not long ago. You know that the attorney grew up here, and is from a family with a good reputation. He recently helped at least one of your friends with a legal problem.

Role Play "Acting" instructions:

When you play this role, you should be self-righteous, adamant about the desire to get your 1/3 percent and about your brothers as lazy ne'er do wells. Blame the decline in the warehouse on them. Blame your father for being blind and for siding with the younger children.

Emphasize your own stress. Assume you have three children. While all are out of the house, two would like to go to graduate school and you would like to be able to help them financially. Your spouse has reentered the work force, but is employed in retail sales and earns a VERY small salary.

In adopting a persona/personality for this exercise, imagine yourself to be either:

- *Someone reticent with information - reserved, perhaps shy (yet feeling stress). You might even be embarrassed at current circumstances. In other words, you will not volunteer*

information or telegraph your state of mind. Yours would be the clenched jaw, little slips about what you might be feeling, but nothing obvious unless the lawyer explores it. Your lawyer will have to work to get you to communicate what you are thinking and what is bothering you.

OR:

- A “real talker” providing a great deal of information very quickly, perhaps even more details than in the fact pattern, but not in perfect sequence or logical order. Do not be calm. Be agitated. Talk about the fact that you are stressed. Express general money worries and the pressure and risk in owning a small business in these times. Be loud in asserting that your siblings are conspiring against you, and that your father has been manipulated. Rant a bit at how unfair it is that you, the dutiful and honest one, was the one forced out. At the same time, you can talk about feeling guilty over the ruined relationship with your father, who is so ill. Talk about wanting to achieve family peace, but how difficult that is when they are cheating you. Assert that you are sure they overcharged you for the warehouse property because they knew you were the buyer. Talk about how hard it was when you first took over the warehouse when you were part of the family company, how they ran it into the ground after you left, and how you have had to invest since buying it back. Be angry that you did not see any of your share of what you paid for the building. Assert that they are incompetent... Play this one a bit “over the top.” Your lawyer’s job will be to calm you down, get the sequence and the facts straight, elicit careful details, make you feel that he/she understands your dilemma.*