

court asks that reconsideration be granted to the extent that the document marked as exhibit O, be admitted. This would do nothing more than bolster the WCJ's decision as it relied on testimony concerning the contents thereof.

Based on all of this Mesa Pharmacy was a fiction – not a legal fiction, just a fiction. It did not exist legally. No effort was given to separate the corporation from those who ostensibly owned/operated it, or *ran business through it*. It was a straw entity, a shell. It therefore has no ability to step back and away from the participants and protect these liens as it lacked any legal existence separate from them.

b. Garbino Produced All The Revenue And Testified That He Had Influence

Garbino testified that he had substantial influence at Mesa Pharmacy: one-hundred-million dollars' worth. It wasn't total control but it was at least as much as that of a 10% shareholder. In fact, when Mesa's governing body took actions he didn't agree with, he did what a shareholder would do and sued them. SoE 5/14/19, p. 12, ln 1-2.

Testimony from Ms. Do, Ben Birch, Mr. Kurtz and Mr. Garbino all confirmed that Mesa Pharmacy was foundering before the contract with TPS/Garbino. They went from having to close locations due to finances, to massive infusions of cash through Garbino physician prescriptions leading to tripling the number of employees on staff.

4. THE COURT'S DECISION IS SUPPORTED BY THE SUM TOTAL OF THE EVIDENCE

One of Mesa's founders, Ben Birch, was a felon convicted of financial fraud against the United States Government (specifically Bankruptcy Fraud). Before Garbino's arrival on scene, Mesa Pharmacy was already doing business with Robert Villapania who is charged with engaging in Workers' Compensation pharmacy kick-back schemes. After Garbino's relationship begins Mesa engages in business with Robert Jarminski and Craig Chanin, both of whom are also charged with pharmacy kick-back schemes in Workers' Compensation. Garbino's silent business

partner was David Fish who has a conviction for workers' compensation fraud. Finally, Garbino, himself, is guilty of Federal Health Care Fraud. There are a great deal of nasty players circling in Mesa's orbit, although this, in and of itself, wouldn't be enough to find control by Garbino.

Then, however, the contract between Mesa and Trestles was so bad that Andrew Do has to take the 5th rather than testify about it.

Also, Mesa did not adhere to the rules of corporate governance, gutting the foundation of any corporate legitimacy. They could not, or would not, produce more than three Minutes of the Board of Directors for a company that existed for at least eight years. Their own attorney, who Mesa represented would be testifying to explain the discrepancy, refused to testify. The founding group can't recall if they ever attended a Board of Directors' Meeting and/or what their positions on that board were, if any. The putative president of the corporation, Andrew Do, admits that he was a figurehead on paper. He had no decision making authority. Ed Kurtz seemed to have his hands in everything. His own testimony is that he entered into contracts with Garbino's company, financiers such as Javlin, and the merger with PAWS. Other Mesa affiliated persons "may" have attended. He just did what he wanted. State documents were being filled out on behalf of Mesa and none of the principles can remember who filled them out and point the responsibility at their compatriots. These documents seem to list whoever seemed most beneficial at the time as owners or directors. The company didn't do anything to preserve the legal fiction of a separate identity.

Garbino testified that, and Kurtz actually admitted that, he had a great deal of influence because of the amount of money he brought in. Mesa was cutting locations and not making money before the contract with Garbino. He arrives with his company TPS and they start raking in *millions of dollars*. They have to expand to three times the size of their prior operations staff and procure equipment just to manage the business Garbino's pushing through their doors. Kurtz strategized, not with Andrew Do the alleged president of Mesa, but with Garbino about how to expand Mesa and take it worldwide. Kurtz nominated Garbino to the Praxsyn Board of Directors as one of Mesa's three slots. Their subsequent falling out does nothing to undercut Garbino's influence during the time they were filling the prescriptions.

As Mesa can't show any operation as an independent entity, control would default, first, to whoever had the most financial impact – Garbino, and second to the post-merger parent

company, Praxsyn. Garbino was on the Board of Directors of Praxsyn. Garbino testified that he saw Mesa and Praxsyn as one and the same. Other witnesses testified that Praxsyn's only asset was Mesa. Praxsyn's Board discussed Mesa's business. Praxsyn's Board fired Mesa's president and pharmacist-in-charge.

From the beginning of his relationship with an already hollow Mesa, Garbino had at least as much control as that of a 10% shareholder. And he absolutely had control as a Director when he sat on Praxsyn's Board which directed Mesa as a puppet and not an independent subsidiary corporation.

CONCLUSION

For all the forgoing reasons the Appeals Board should deny the Petition for Reconsideration, except for the specific purpose of admitting Exhibit O into evidence.

DATE: August 2, 2023

Amy Britt

WORKERS' COMPENSATION JUDGE