

December 27, 2004

Minority Interest in a Dissolved General Partnership that Continues Operations Should be Valued on a *Going Concern* Basis

On December 22, 2004, in *Anastos v. Sable*, the Massachusetts Supreme Judicial Court considered the issue of the appropriate method for valuing a minority interest in a general partnership when the minority member caused a statutory dissolution of the partnership in violation of the partnership agreement and the remaining partners elected to continue to operate the partnership. The court held that the partnership should be valued on a “going concern” basis.

The plaintiff owned a one-third interest in a general partnership and sought to have the Superior Court dissolve the partnership for cause. The remaining partners claimed that this action violated the partnership agreement and sought damages. They also exercised their right to continue to operate the partnership and to pay the plaintiff the value of his partnership interest. Because the partnership was to remain in business, the trial judge in Superior Court valued the plaintiff’s interest in the partnership on a “going concern” basis. In doing so, the judge discounted the value of the net assets of the partnership by 40 percent because the plaintiff had no control over the operations of the partnership and there would be a limited market for the partnership interest.

The plaintiff appealed, arguing that the appropriate measure of value for his partnership interest was the liquidation value of the partnership, entitling him to his percentage interest in the partnership’s net assets without applying the discount used by the trial judge. The Supreme Judicial Court upheld the use of the going concern method of valuation noting that M.G.L. Chapter 108A, Section 38, which governs the rights of partners upon the dissolution of partnership, had separate provisions governing the rights of a partner to receive payment for his partnership interest depending on whether the business of the partnership was to continue after the dissolution.

The Court held that as the plaintiff could not force the liquidation of the partnership and the partnership was continuing operations, the statute required that the plaintiff’s partnership interest be valued using a method other than the liquidation value of the partnership. The Court noted that the statute specifically excluded good will in calculating the valuation of the partnership, and good will would only be relevant if the partnership continued as a going concern. The Court upheld the 40 percent discount applied by the trial court to the net asset value of the partnership to determine the value of the plaintiff’s interest.

For more information, please contact an attorney in our Boston office.