

Capitol Report



NJSBA

NJSBA

Dissolution and Termination of LLC Recission Permissible by Court Order, Says NJSBA; Appellate Division Agrees

In a case of first impression, the Appellate Division held that trial courts possess the jurisdiction and authority to order rescission of a certificate of dissolution and termination with a proper showing of justification and notice to interested or affected parties. The New Jersey State Bar Association participated as *amicus curiae* in the matter of *Patel v. N.J. Department of Treasury, Division of Revenue and Enterprise Services (DORES)*, Docket No. A-2370-22. NJSBA member and past Business Law Section Chair Gianfranco A. Pietrafesa argued the matter on behalf of the Association and wrote the brief.

The certificate of formation of an initial limited liability company was filed in 2003 and went through a number of amendments to change members, the last amendment of which was filed in 2016. The LLC holds a liquor license. The business was sold to Patel in 2019, and no further amendments were filed to reflect the new ownership. In 2020, a former LLC member who sold the business to Patel filed a certificate of dissolution and termination with DORES without any notice to Patel. When Patel discovered the filing in 2021, he attempted to reinstate the LLC to avoid upending ownership of the liquor license.

The NJSBA argued that DORES's role in filing a record is ministerial. It is not required to verify the authority of a person signing the record, nor does it have discretion to refuse to file a record that otherwise satisfies statutory requirements. While the New Jersey Revised Uniform Limited Liability Act (RULLCA) does not authorize the rescission of a certificate of dissolution and termination, a court may rescind a certificate on equitable grounds in the trial court.

Sorting through this complex history, the Appellate Division noted that all of the parties agreed that DORES lacks the legal authority to rescind a certificate and terminate administratively.

“That said, the counsel before us all agree there should be a clear avenue for the present members of an LLC to pursue the rescission of an LLC's dissolution and termination on equitable grounds, in instances where the certificate has been filed improperly,” said Judge Jack Sabatino. “With the concurrence of all counsel, we conclude the appropriate mechanism to pursue such rescission is through a civil action in the trial court.”

The matter was remanded to the trial court to explore the facts surrounding the filing of the certificate of dissolution and termination, and to appropriately adjudicate the matter.