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Client Bulletin



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Case Illustrates the Importance of Maintaining Minutes/Records

The recent case of *Williams v. Farmwald*, 2016-Ohio-7151, from the Eleventh District Court of Appeals, shows the critical importance of maintaining minutes and other records. Matthew Farmwald operated Evolution Ultra Lounge through an Ohio corporation, Storm 28611, Inc. On December 27, 2010, there was a “Teen Night” at Evolution Ultra Lounge. The capacity permitted by the fire regulations was exceeded by about 150 people. Some of the patrons wore gang insignia and several fights broke out. A security guard, Maurice Wright, told Mr. Farmwald to close down the lounge early, but he refused. Essentially, security broke down completely. An unidentified patron re-entered the lounge after being kicked out for fighting and fired three shots into the crowd, hitting two persons, neither of whom had in any way provoked the shooter. The court found that Mr. Farmwald, Storm 28611, Inc. and Mr. Wright were jointly and severally liable for plaintiffs’ damages (\$165,779.04). Mr. Farmwald appealed, asserting that the trial court erred in finding him personally liable for negligence “when he had an active Corporation in Ohio formed to shield him from personal liability.”

After discussing the Ohio Supreme Court’s three-prong test from its *Belvedere* case “to pierce a corporate veil and impose personal liability on a shareholder” (1-control over the corporation so complete that the corporation has no separate mind, will or existence of its own; 2-control over the corporation exercised in such a manner as to commit fraud or an illegal act against the plaintiff; and 3-injury or unjust loss to the plaintiff from such control and wrong), the Court of Appeals found that the first prong was met as “the evidence showed that: 1) there was a failure to follow corporate formalities; 2) there was an absence of corporate records; and, 3) that [sic] Storm was a façade for Farmwald’s operations. For example, *** [n]o corporate records or minutes were introduced. . . . There was no evidence that annual meetings were held, or that Storm even had a board of directors.” The Court of Appeals then went on and found the second and third prongs of the *Belvedere* test to be met and affirmed the personal judgment against Mr. Farmwald. Had Mr. Farmwald followed the statutorily mandated formalities and maintained minutes, he could have avoided personal liability for the \$165,779.04 judgment amount.

Although Storm 28611, Inc. was a corporation and the *Belvedere* 3-prong test was developed to “pierce a corporate veil” and hold a shareholder personally liable, it is uniformly believed that the Ohio Supreme Court would apply the *Belvedere* 3-prong test to determine whether a member of a limited liability company can be held personally liable for the company’s acts. Frequently, individuals use the Secretary of State’s forms to form an Ohio limited liability company, do not have an operating agreement prepared, do not hold annual meetings, and do not maintain minutes, but think they have shielded themselves from personal liability. Those individuals are taking a huge risk!

On the second page of this Bulletin is information regarding our law firm’s MinuteMinder® service.

MINUTEMINDER®

Manos, Martin & Pergram Co., LPA would like to take this opportunity to explain to you our corporate and limited liability company (LLC) record book maintenance service called MinuteMinder®.

MinuteMinder® will make entity record keeping as easy as possible for you and your entity. For our clients whose minute books we maintain, we prepare regular annual minutes and do any necessary filings with the Ohio Secretary of State for an annual fee of \$150 for a single-member/shareholder entity and \$200 for a multi-member/shareholder entity, plus any filing fees. For this annual fee, we will:

- prepare your annual minutes, which will satisfy all legal requirements
- prepare and file any necessary Ohio Secretary of State filings
- maintain the company's original record book
- provide duplicate copies of the record book for you and your accountant/CPA
- in the case of an LLC, provide assistance and documents for compliance with the statutory requirements regarding records that must be kept at the principal office of the LLC
- update all copies of the company's record book each year

It is crucial that shareholder and director minutes or member actions, as the case may be, be prepared and maintained for your corporation or LLC. By properly documenting entity actions, the entity will be prepared should it be audited by a governmental agency, request a bank loan, decide to sell its assets or you decide to sell your membership interest/stock. We will communicate with you to obtain the information necessary to prepare the annual minutes at the appropriate time.

As a further service for those of our clients who have enrolled in MinuteMinder®, if you choose, Reassist, Inc., a wholly-owned subsidiary of this law firm, will serve as the statutory agent of your entity. There is an initial start-up fee of \$25. Thereafter, the service is included in the annual fee for the MinuteMinder® service. Be aware that national vendors charge anywhere from \$250 to \$300 **per year** to provide only services as a company's registered agent. The services of the national vendors do not include the preparation of annual minutes or many of the bulleted items above.

If you are interested in subscribing to this service, please contact us.

Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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