



California Corporate & Securities Law

Failure To Determine Board Meeting Formalities Leads To Six Figure Court Sanctions Against Attorney

By Keith Paul Bishop on November 28, 2011

The fundamentals of corporate action can seem about as interesting as flossing. Yet, the failure to attend to either is likely to result in unpleasant consequences as one lawyer recently discovered in *Winterton v. Humitech of No. Cal., LLC*, 2011 Bankr. LEXIS 4164 (9th Cir. BAP 2011).

The case began with a lawsuit in California. That lawsuit resulted in one of the parties – a Nevada corporation named Blue Pine Group, Inc. - commencing a Chapter 7 bankruptcy case. A purported shareholder in Blue Pine responded by filing a motion to dismiss the bankruptcy case on the grounds that the petition had not been properly authorized under Nevada law. Blue Pine responded by submitting two sets of board meeting minutes. Both minutes reflected the attendance of only two of Blue Pine's four directors. The first set of minutes included resolutions adopted by the two directors purporting to remove the other two directors. The second set of minutes included a resolution that purported to authorize placing Blue Pine in bankruptcy.

The Bankruptcy Court determined that the board of directors of a Nevada corporation must approve extraordinary actions such as a bankruptcy filing. The court also found that under Nevada law, removal of a director requires a 2/3 vote of the stockholders. Because the two absent directors had not been validly removed, there was no valid notice, quorum or vote taken at the meeting purporting to authorize Blue Pine's bankruptcy. Consequently, the court dismissed Blue Pine's bankruptcy case.

Unfortunately for the lawyer handling Blue Pine's erstwhile case, matters did not end then and there. The stockholder filed a motion for sanctions that resulted in an award of over \$109,000. The lawyer appealed. The Bankruptcy Appellate Panel agreed with the Bankruptcy Court's finding that if he "had simply examined the evidence the record [the minutes], done even the minimal research into Nevada corporate law, and compared this with what his clients told him, he would have understood that he had no authority to file the petition and continue to advocate that it was proper."

For those interested in the Nevada statutes at issue in the case, these are discussed in [**Bishop & Zucker on Nevada Corporations and Limited Liability Companies**](#) as follows:

Please contact [**Keith Paul Bishop**](#) at Allen Matkins for more information kbishop@allenmatkins.com

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<u>Statute</u>	<u>Subject</u>	<u>Book Reference</u>
78.315	Quorum requirement for board meetings	§ 8.7
78.335	Removal of directors	§ 8.5
78.580	Approval of dissolution	§ 14.2

This isn't just a Nevada issue. California, of course, also imposes a quorum requirement (Cal. Corp. Code § 307(a)(7)) for board meetings. California also does not permit directors to remove other directors (but does allow a board to declare vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony (Cal. Corp. Code § 302)).

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