

Court Says Directors Can Be Barred From Corporate Documents

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Suburban Waste Services is a closely held, Delaware-based waste and recycling company founded in 2000 by Louis E. Bizzari and his wife, Christina. In 2013, the Bizzaris brought in a third co-owner, David DiLenno, who had three decades of experience in the waste management space. DiLenno was named CEO, Louis Bizzari chief operating officer, and Christina Bizzari chief financial officer. Stock ownership was evenly split among the three of them, and they all served as directors.

In addition to introducing sweeping changes to the company's day-to-day management and paying special attention to financial management, DiLenno began a romantic relationship with Christina Bizzari. Louis Bizzari began to withdraw from the business to the point that he stopped showing up for work in the fall of 2014. In addition to being seen on the premises of B&L Hauling, a direct competitor of Suburban Waste, he contacted employees of Suburban Waste, encouraging them to switch companies.

Despite these actions, Louis Bizzari remained on the Suburban Waste board. In January 2015, he sent a letter demanding to see documents detailing the company's financial information. Bizzari stated that his intention was to assess the company's financial

health and determine the value of his stock. This request was denied on the grounds that Bizzari did not specify what wrongdoing he suspected was taking place, as well as his history of behavior that was counter to the company's interests. Bizzari consequently took his case to court.

Although these facts are somewhat unusual in the context of corporate litigation, the general principles applied by the Delaware Court in *Bizzari v. Suburban Waste Services Inc.* are useful for directors in the event they are confronted by a stockholder or a director demanding corporate records.

The court reasoned that the stated purpose of Bizzari's demand was valid, to the extent that the books and records were demanded for valuation purposes. While the court did allow some basic financial information to be provided, more detailed information that Bizzari might have been given access to was withheld.

Traditionally, stockholders and directors are granted access to information needed to value their interest in a closely held company. Although Bizzari's primary purpose was deemed legitimate, he was denied based on the findings that the requested information could also be used to "compete with and inflict reputational harm on" the corporation because of the personal animus toward the

other two principals and managers of the company.

Further, the presumption that a director should be entitled to unfettered access to books and records of the company was rebutted because Bizzari's association with B&L Hauling constituted a breach of fiduciary duty. This decision represents an exception to the general rule that as long as the primary purpose to obtain corporate records is legitimate, any secondary purpose is irrelevant.

A common approach to requests for corporate records is to first acknowledge that most of the information needed to prepare a basic valuation of the publicly held company is generally available already to the public. Those seeking additional information not generally available would be well advised to have a valuation expert establish why specifically enumerated additional information is needed, and for what specific aspect of the company's valuation it is needed.

The Bizzari case exemplifies that demands for records by either a stockholder or a director can involve expensive legal proceedings. Moreover, there are successful defenses that can be employed by corporations when stockholders or directors seek confidential corporate information that is not being requested for a valid purpose.