

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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In the Matter of the Application of:

ACME BUS CORP.,

Petitioner-Plaintiff,

-against-

HARBORFIELDS CENTRAL SCHOOL DISTRICT, EAST
ISLIP UNION FREE SCHOOL DISTRICT, HAUPPAUGE
UNION FREE SCHOOL DISTRICT, BRENTWOOD UNION
FREE SCHOOL DISTRICT, SUFFOLK TRANSPORTATION
SYSTEMS, INC., SUFFOLK TRANSPORTATION SERVICE,
INC., SUFFOLK TRANSPORTATION CORP., SUFFOLK
BUS CORP. and HUNTINGTON COACH CORPORATION,

Respondents-Defendants,

For Relief Pursuant to Article 78 and 3001 of the Civil Practice
Law and Rules of the State of New York.

REPLY AFFIDAVIT
IN SUPPORT OF
PETITION

Index No.: 24004-12

Assigned Justice:
HON. DANIEL MARTIN

-----X
STATE OF NEW YORK)
) SS.:
COUNTY OF SUFFOLK)

MICHAEL COLLINS, CPA, CFP, being duly sworn, deposes and says:

INTRODUCTION

1. I am a principal in the accounting firm of Albrecht, Viggiano, Zureck
& Company, P.C., a New York corporation located at 25 Suffolk Court, Hauppauge, New

York ("AVZ Company") and the primary accountant for petitioner Acme Bus Corp. ("Acme").

2. AVZ Company is one of the largest certified public accounting firms on Long Island. We provide a wide range of financial, accounting, auditing, tax and consulting services to a variety of businesses and industries. I have been an accountant since 1973 and a Certified Public Accountant (CPA) since 1979. I also have extensive knowledge and experience in reviewing financial information and conducting business audits.

3. This affidavit is submitted at the request of Ronald A. Baumann, president of Acme.

4. Although Acme is a client of AVZ Company, neither I nor AVZ Company has any financial interest in any of the parties or in the outcome of this proceeding.

5. Acme, along with affiliated companies, Baumann & Sons Buses, Inc. and Alert Coach Lines, Inc., are all part of the same group of family-owned transportation companies that are subsidiaries of ABA Transportation Services Corp. For the purposes of simplifying this affidavit, I will refer to the financials of ABA Transportation Services Corp. as Acme's financials.

FINANCIAL COMPARISON OF
ACME AND SUFFOLK TRANSPORTATION

6. The "Scoring Information" to the Hauppauge RFP provides that it will award points in the "Financial Analysis" category based on each proposer's "financial strength," stating:

FINANCIAL ANALYSIS

the evaluator will review the financial documents submitted to determine the financial strength of the proposer. Added value should be given to proposers submitting certified financial statements or in the case of publicly traded companies, their annual report. Scores may range from a high of 10 points to a low of 0 points.

Petition, Ex. "L," p. 3.

7. Acme's counsel has informed me that the Hauppauge Union Free School District ("Hauppauge School District") awarded respondent Suffolk Transportation Service, Inc., Suffolk Transportation Corp., Suffolk Bus Corp. and Suffolk Transportation Systems, Inc. (collectively or individually "Suffolk Transportation") 10 out of 10 points in the "Financial Analysis" category because, for the 2011 fiscal year, it had a "significant net income (\$1,673,168) as compared to total revenue (\$30,279,673)." See Stucchio Aff., p. 10. In contrast, Acme was awarded only 5 out of 10 points in the same category "as a result of its significantly lower net profit (\$394,671) as compared to revenue (\$98,719,475)" for the same year. See Stucchio Aff., p. 10.

8. I was also provided with Suffolk Transportation's and Acme's consolidated statement summaries for the 2011 fiscal year (see Stucchio Aff. Exs. "K" and

"L"), which are again annexed hereto as Exhibit "A" and "B" respectively, and have been asked by Acme's counsel to examine whether the Hauppauge School District's decision to score Acme lower than respondent Suffolk Transportation within the "Financial Analysis" category had any rational basis. After reviewing this information, in my professional opinion, I conclude that it did not. Many reasons exist for this.

9. First, net profit is not an appropriate financial indicator to apply in this instance because Acme's and Suffolk Transportation's corporate structures are materially different.

10. Suffolk Transportation is an "S" Corp., which means that any income or profit is taxed to the owners as if they were partners and is paid to them as "distributions."

11. Accordingly, the \$1,673,168 amount referenced by the Hauppauge School District to represent Suffolk Transportation's "net income" (as compared to total revenue of \$30,279,673) does not account for owner compensation.

12. In contrast, Acme is a privately held "C" corporation and thus the \$394,671 in "net profit" cited by the Hauppauge School District (as compared to total revenue of \$98,719,475) reflects the profits remaining after payment of a corporate level tax (\$197,728) and after payment of owner/officer salaries (included in General and Administrative Expenses).

13. In short, the Hauppauge School District's comparison of the "net income" of an "S" Corporation to the "net profit" of a "C" corporation based on the

financial statement summaries attached to the Stucchio Affidavit cannot fairly reflect the comparative financial strength of the two companies.

14. Second, as a general matter, employing net profit or net income as the sole and determinative factor of a company's financial strength for the purposes of awarding points within the "Financial Analysis" category overlooks a multitude of other equally important indicators of a company's financial condition, such as gross revenues, cash flow, net worth, working capital ratio, debt-to-equity ratio, and gross profit margin.

15. Although the Hauppauge School District only furnished in this proceeding the proposers' consolidated statement summaries, it had access to detailed financial statements for both Acme and Suffolk Transportation. I was informed that Acme provided its certified financial statements, including its annual balance sheets. Since the language of the Hauppauge RFP strongly encouraged proposers to submit certified financial statements, I assume Suffolk Transportation did the same.

16. It was therefore arbitrary and improper for the Hauppauge School District to ignore these other indicators of financial strength, and focus on "net income" alone.

17. Third, the Hauppauge School District entirely overlooks that Acme, unlike Suffolk Transportation, has significantly high retained earnings because it does not distribute its net income to its shareholders, but rather invests that net income back into the company.

18. This is long-standing corporate policy contributes substantially to Acme's financial stability. A high retained earnings figure allows flexibility to invest in new equipment, avoid financing, pay off debt, and provide a financial cushion to aid the company in the event it sustains any unanticipated losses.

19. Acme's consolidated financial summary reflects that it has retained earnings of \$17,365,170 because of the significant revenues generated each year which, as a matter of its corporate policy, are retained by the company. For example, in 2010 Acme's net income of \$2,887,754, was invested back into the business in its entirety.

20. Notably, as a direct result of this fiscally conservative practice, Acme owns schools buses worth approximately \$13 million that are fully paid off and unencumbered by loans.

21. Turning to the other financial indicators previously mentioned, a far better indicator of financial stability than "net income" is a company's gross revenues. Acme's gross revenues in 2011 of \$98,719,475 were more than three times Suffolk's gross revenues of \$30,279,673. What this means is that the acquisition or loss of a major contract would impact Suffolk Transportation much more than Acme. For instance, if Acme lost a \$10 million contract, that would represent 1/10 of its business, but for Suffolk Transportation, the loss would be 1/3 of its business.

22. Also more indicative of financial stability than "net income" is a company's cash flow and balance sheet.

23. A statement of a company's cash flows is often used by analysts to gauge financial performance. Cash flow is crucial to ensuring that creditors, employees and others can be paid on time. Accordingly, if a company's cash flow is insufficient to support its operations, it is said to be insolvent, and a likely candidate for bankruptcy.

24. Acme's cash flow for the 2011 fiscal year was \$3,634,831, over two times the net income of Suffolk Transportation.

25. In addition, my review of Acme's 2011 balance sheet reflects that its net worth (as part of the larger whole of ABA Transportation) is about \$20 million. Net worth is important because it is a measure of a company's assets less its liabilities.

26. Acme's working capital in 2011 was \$8,733,512 and the working capital ratio was 1.59 to 1. Working capital ratio determines a company's financial stability and reflects a measurement of the overall liquidity position of the company. Generally, the working capital ratio has to be at least 1:1, which represents that the entity has enough funds to pay its current liabilities. The higher the ratio, the more liquid the company or the more capable it is of paying its obligations.

27. Acme's equity in 2011 was \$17,537,770 and its debt-to-equity ratio was only 1.79 to 1, which is very strong and is an indicator of its capitalization. The debt-to-equity ratio is used by creditors or lenders to calculate the creditworthiness of a company.

28. Acme's gross profit margin was 15% 2011, when compared to the industry range of 10% to 26%. Gross profit margin indicates the percentage of sales revenue that is not paid out in direct costs (i.e., cost of sales), and is generally used to

indicate the percentage gross profit that can be generated by each dollar of future sales. Higher is normally better and means the company is more efficient.

29. Notably, Suffolk Transportation's balance sheet is not provided by either Suffolk Transportation or the Hauppauge School District in this proceeding in order to allow me to analyze its net worth, capital ratio, debt-to-equity ration and gross profit margin and compare them with Acme. The consolidated financial summaries relied upon by the Hauppauge School District simply do not provide adequate information to make such a comparison.

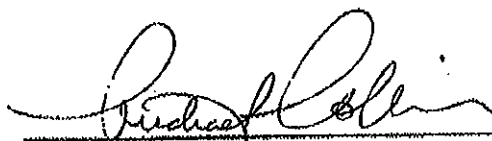
30. Finally, I note that Suffolk Transportation's itemized "Direct Costs" does not include fuel or facilities costs. Fuel is a major expense category for a school bus company, suggesting that the summary statement is incomplete in a way that would substantially overstate net income. In contrast, fuel costs are included in Acme's unitemized "Cost of Revenues." As for facilities costs, none are reflected in Suffolk's income statement; costs such as rent, real estate tax, utilities, etc.

CONCLUSION

31. For all these reasons, the Hauppauge School District's decision to utilize a company's "net income" or "net profit" as the determinative factor of financial stability is entirely arbitrary.

32. The award of 5 out of 10 points to Acme and 10 out of 10 points to Suffolk Transportation in the "Financial Analysis" category is also backwards since based

on the consolidated financial summaries provided Acme is a substantially more stable,
secure and revenue generating company.



MICHAEL COLLINS, CPA, CFP

Sworn to before me this
30th day of January, 2013.



Notary Public

IRENE E. HOWELL
NOTARY PUBLIC, State of New York
No. 4871174
Qualified in Suffolk County
Commission Expires Sept. 8, 2014