

The “Daily Plan-It”™

SHUMATE BROKERAGE CORP.

Volume 10, Issue 16

8/7/2008

Is a Single Member Limited Liability Company worthless as an Asset Protection Vehicle?

A case out of the Federal Middle District of Florida is raising an interesting issue. The case, FTC v Olmstead 11th Circuit Court Case #06-13254 has been sent to the Florida Supreme Court for an interpretation of Florida Law. The issue is whether *under Florida Statute 608.433(4) a court may order the sole owner of a single member Limited Liability Company (LLC) to surrender all “right, title, and interest” in his or her LLC to satisfy a judgment.*

Why is this an issue?

When set up properly and used effectively the LLC is powerful asset protection tool. Usually, the LLC or the traditional Corporation (regardless of whether taxed as a C corporation or S-Corporation) is the first line of defense protecting its owners from the potential claims of creditors. Generally speaking, both entities are about equal in terms of protecting the owners from claims of business creditors. As long as set up and maintained properly, a creditor cannot pierce the entity legal shield to get at the owners personal assets.

The LLC and the Charging Order

The LLC provides a greater level of protection dealing with claim’s against its owners, not necessarily claims against the LLC. For example, two owners, Kim and Lisa create an LLC called “The House of Fashion, LLC.” Kim is sued for a car accident and loses. A judgment is entered against her. If she owned a traditional corporation, Judgment creditor could seize Kim’s shares and own her interest of the Corporation. But, since Kim owns her interest through LLC units, the Judgment creditor can only receive a charging order providing that if Kim receives any distributions or other benefits, those must flow to the creditor and not to Kim. The creditor cannot seize her units, but it somewhat stands in her shoes financially. While we are over simplifying this example, it is important to note, that if Kim owned shares in a regular corporation, they would be seized.

In an LLC her units would be protected and the creditor would only receive a charging order.

Second Case in the Country

In 2003, A US Bankruptcy Judge ruled that the sole owner of a Single Member LLC could have the ownership units seized by a bankruptcy trustee and the LLC liquidated to pay claims of creditors. In re Albright, No. 01-11367, (Colo. Bkrpt. April 4, 2004). The logic was that if there is no other owner of the LLC, the charging order protection is not relevant. If you have one owner in a single member LLC and that owner has a creditor, then the creditor can seize the owner’s interest to satisfy its claim. It’s important to remember, we are not saying that the LLC will not work as a first line of defense against a creditor of the LLC, but whether the single member LLC will be worthless to protect the owner from claims not related to the LLC. We will keep you in the loop once the Florida Supreme Court rules.

7

Term Carriers to choose from at,

www.ShumateBrokerage.com

Are you getting the best deal?
Call.
800.330.8582 ~ 813.254.7681



Serving Florida Insurance Professionals since 1957!