

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF NEW HAMPSHIRE

**ZAP'D GAMES, L.L.C., a  
New York Limited Liability Company;  
ZEV SHLASINGER, a Florida resident;  
PAUL GERARDI, a New York resident,**

**Plaintiffs,**

**v.**

**MYRIAD GAMES, L.L.C., a New  
Hampshire Limited Liability Company;  
DANIEL YARRINGTON, a New  
Hampshire resident,**

**Defendants.**

**Case No. 1:16-cv-290-JL**

**Chief Judge Joseph N. Laplante**

**AMENDED COMPLAINT AND REQUEST FOR JURY TRIAL**

COMES NOW, the plaintiffs, ZEV SHLASINGER, a Florida resident, and PAUL GERARDI, a New York resident (collectively “Plaintiffs”), by and through undersigned counsel, hereby sue the defendants, DANIEL YARRINGTON, a New Hampshire resident (collectively, “Defendants”), and allege the following:

**PARTIES**

1. ZAP'D GAMES, L.L.C., a New York Limited Liability Company.
2. Plaintiff, Zev Shlasinger (“Shlasinger”), is a Florida resident.
3. Plaintiff, Paul Gerardi (“Gerardi”), is a New York resident.
4. MYRIAD GAMES, L.L.C., a New Hampshire Limited Liability Company.
5. Defendant, Daniel Yarrington (“Yarrington”), is a New Hampshire resident and owner and Chief Executive Officer of Myriad Games, L.L.C. (“Myriad”), a New Hampshire Limited Liability Company.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as this action involves citizens of different states and the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs for each of them.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

### **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

8. In late 2011, Shlasinger and Gerardi decided to open a retail store (“Store”) in Staten Island, New York to sell specialty board and card games.

9. In the beginning of 2012, Shlasinger spoke with Yarrington regarding the Store and Yarrington suggested a three-way partnership in the operation of the Store given his operation of Myriad’s two (2) board game retail stores.

10. During a trade fair in April 2012, Shlasinger, Gerardi, and Yarrington discussed the operation of the Store and agreed to form Zap’d Games, L.L.C. as a Limited Liability Corporation that would operate the Store in conjunction with Myriad. However, Shlasinger and Gerardi insisted that Zap’d Games and Myriad remain distinct and entirely separate from one another with the exception of their shared capital contribution in the Store.

11. As owner of Myriad, Yarrington convinced Shlasinger and Gerardi that the Store could benefit by operating as a legally separate entity, yet under the Myriad name, and using Myriad’s distribution, payroll, website, purchasing and other resources given Myriad’s size as a larger retail store operation.

12. On or about June 25, 2012, Shlasinger, Gerardi, and Yarrington memorialized their intention to create Zap’d Games, L.L.C. by entering into an Operating Agreement

(“Operating Agreement”) and filing the appropriate Articles of Incorporation with the State of New York. Please see a copy of the Operating Agreement attached hereto as **Exhibit A**.

13. The Agreement provided the term of Zap’d Games would be perpetual unless it was sooner dissolved and its affairs wound up in accordance with New York law or the Operating Agreement.

14. In order to finance Zap’d Games, Shlasinger agreed to contribute one hundred thousand dollars (\$100,000.00), and Yarrington agreed to contribute on an as-needed basis, up to a maximum of one hundred thousand dollars (\$100,000.00). Shlasinger was to make his contribution in his individual capacity while Yarrington was to provide his contribution through Myriad.

15. The Agreement appointed Shlasinger as Managing Member of Zap’d Games, and Gerardi and Yarrington as Members.

16. As Managing Member, the Agreement provided that no Member other than Shlasinger had the authority to bind Zap’d Games.

17. On June 29, 2012, Zap’d Games and Myriad entered into a Store Agreement. The Store Agreement memorialized each entity’s mutual obligations, and specifically stated that Myriad was to provide turnkey support and operation services to Zap’d Games in operating the Store. Please see a copy of the Store Agreement attached hereto as **Exhibit B**.

18. The Store Agreement provided that Shlasinger and Myriad would receive equal disbursements from the Store until such time as each of them have recouped the money they contributed. Subsequently, all profits would be equally split with thirty-three point thirty-three percent (33.33%) to Shlasinger, Gerardi and Myriad.

19. The Store Agreement further set forth that Myriad was to maintain complete financial books and records with respect to the Store and that Zap'd Games would receive a written statement of total sales for the Store on an annual basis.

20. The Store Agreement stated that Zap'd Games would invest one hundred thousand dollars (\$100,000.00) in the Store through two (2) fifty thousand dollar (\$50,000.00) contributions by Shlasinger with the first on or before July 12, 2012 and the second on or before June 30, 2013.

21. Shlasinger was to act primarily as a financial investor in the operation from his residence in Florida. However, Gerardi was to provide sweat equity by working at the Store as the general manager at a reduced salary of thirty thousand dollars (\$30,000.00) per year for each of the first three (3) years. Meanwhile, Yarrington would control Myriad's requisite duties for the Store while operating his separate Myriad stores.

22. After all Parties executed the Store Agreement, they agreed that Yarrington should negotiate the lease for the Store's location.

23. However, Shlasinger and Gerardi instilled upon Yarrington that the lease for the Store must be in Zap'd Games' name as Shlasinger and Gerardi did not want to act as guarantors on a lease for Myriad. Yarrington agreed that Zap'd Games would appear on the lease.

24. Nevertheless, unbeknownst to Shlasinger and Gerardi, Yarrington initially attempted to enter into the lease under Myriad's name. However, prior to execution, Gerardi recognized the discrepancy and he and Shlasinger refused to execute the lease until it was changed.

25. While Yarrington ultimately changed the name on the lease to Zap'd Games, he falsely misrepresented himself as CEO of Zap'd Games. Please see a copy of the final page of the Lease attached hereto as **Exhibit C**.

26. On or about December 31, 2012, Yarrington went to the bank to open an account for the Store. He surreptitiously filled out all paperwork for the account in the name of Myriad, without advising either Shlasinger or Gerardi. After all paperwork was completed, Yarrington called Gerardi to come and fill out a form to be a signatory on the account.

27. Yarrington previously had opened Zap'd Games' bank account, where all contributions were held, but subsequently closed this account in December 2012 citing trouble he was having with the bank. Therefore, by the end of 2012, Yarrington had commingled all contributions to Zap'd Games with all monies related to the Store's business and he had begun transferring these monies between other Myriad operating accounts in New Hampshire.

28. As a result of Yarrington's clandestine action in identifying the account as that of Myriad neither Shlasinger or Gerardi could access or track any financial activity related to Zap'd Games or the Store. Yarrington continuously misrepresented to Shlasinger and Gerardi that he would re-open Zap'd Games' bank account, but never took such action.

29. In January 2013, the Store officially opened for business, however early on in the operation it became clear to Shlasinger and Gerardi that Yarrington was unresponsive, inattentive, and mismanaged the finances of the Store.

30. Over the course of the first few months, Yarrington refused to respond to any of Shlasinger or Gerardi's requests for financial updates on the Store.

31. Additionally, Yarrington was mishandling Myriad's distribution and purchasing of inventory for the Store.

32. Gerardi regularly communicated to Yarrington that Myriad's inventory manager was under-ordering profitable merchandise leaving the Store without an adequate inventory to meet consumer demands. Nevertheless, Yarrington neglected to correct the inventory stocking issues over which he had control.

33. Also, within the first few months of the Store's opening, Shlasinger and Gerardi discovered that Yarrington had taken out a sixty-five thousand dollar (\$65,000.00) line of credit against the Store's bank account when a check for a Pepsi invoice bounced.

34. Upon investigating the facts surrounding the line of credit, Shlasinger and Gerardi learned that while Yarrington had full access to the Store's bank account, Shlasinger had no access to the account, and Gerardi only had check-writing access.

35. This was directly in contrast to Shlasinger and Gerardi's understanding that the bank account would be an operating account in the name of the Store, strictly for the Store's business functions, and accessible by all three partners.

36. Shlasinger and Gerardi continuously made numerous requests to Yarrington for additional transparency regarding the finances of the Store and details on the sixty-five thousand dollar (\$65,000.00) line of credit. Still, Yarrington refused to respond to their inquiries.

37. In June 2013, Gerardi travelled to Sovereign Bank to inquire as to the Store's bank records and activity. At this time, Gerardi discovered that Yarrington was transferring money between the bank accounts of the Store, Zap'd Games, and Myriad, and in doing so intentionally intermingling each entity's financial records to the detriment of the Store. The records reflected Yarrington was funneling monies out of the Store and Zap'd Games' bank accounts and into Myriad for entirely separate and unrelated business activities.

38. Shlasinger and Gerardi continued to persist in their access to the financial records over which Yarrington was responsible and in September they finally received a woeful accounting of the financial stability of the Store over the course of the first nine (9) months of business. Further, Shlasinger learned that Yarrington was relying on Shlasinger's second investment of fifty thousand dollars (\$50,000.00) to cover the sixty-five thousand dollar (\$65,000.00) line of credit Yarrington had taken out for Myriad against the commingled monies belonging to Zap'd Games and the Store.

39. Upon disclosure of the financial records, Shlasinger and Gerardi immediately requested a face-to-face meeting in New Hampshire between all three (3) partners to discuss the lack of financial transparency in the operation of the Store.

40. On September 24, 2013, the three (3) partners met for a meeting and Shlasinger and Gerardi informed Yarrington of his inventory mismanagement, unresponsive approach to their requests for financial disclosures, and actions in violation of the Operating Agreement. During this meeting, Shlasinger and Gerardi requested the Store's QuickBooks accounts and any and all records in Yarrington's possession, which he agreed to provide following the meeting. Further, Shlasinger questioned why there was no evidence indicating that Yarrington had made any contributions to Zap'd Games for the operation of the Store, or, in the alternative, any documents indicating whether said contributions had been withdrawn.

41. Over three (3) months after the meeting, Yarrington had still failed to provide the QuickBooks information and other financial records. Further, Yarrington failed to provide any indication that he had invested any monies he obligated in favor of Zap'd Games from Myriad.

42. In December 2013, Gerardi noticed that new inventory that was ordered for the Store was not being delivered to the Store and that other merchandise that was sold out was not

being reordered. Gerardi e-mailed Shlasinger and Yarrington to advise them that the continued inventory mismanagement was crippling the profitability of the Store.

43. On December 12, 2013, Yarrington fired Gerardi as General Manager of the Store, despite the fact that both Shlasinger and Gerardi contended he had no authority to take such action.

44. Additionally, Yarrington cancelled Gerardi's access to the limited inventory and register system at the Store, thus leaving the Store without a General Manager.

45. The same day, Yarrington e-mailed Shlasinger and allegedly included a copy of the Store's financial reports. Shlasinger proceeded to forward this e-mail to Gerardi. At this time, Shlasinger and Gerardi discovered that Yarrington had been disproportionately charging Zap'd Games for inventory at the Store causing the Store's cost of goods sold to exceed their actual retail price. Further, Yarrington's financial report vastly overinflated the amount of inventory on the Store's cash flow report thereby making it impossible for Shlasinger and Gerardi to buyout his interest. Yarrington failed to account for about twenty-three thousand dollars (\$23,000.00) in payroll. Finally, Yarrington had depleted Zap'd Games' financial resources by mismanaging the Store's inventory to the extent that Myriad would continuously profit at the expense of Zap'd Games and the Store.

46. After several months, Shlasinger and Gerardi learned that Yarrington had unilaterally closed the Store, cancelled the lease, taken possession of all inventory therein, and closed all bank accounts related to the Store.

47. To date, Yarrington has refused to provide any form of accounting of the Store's inventory to Shlasinger or Gerardi, including that of the Myriad stores whose inventory and bank accounts Yarrington commingled with the Store.



48. Pursuant to Article XIV, Section 14.8 of the Operating Agreement, the above-captioned case is governed by and in accordance with New York state law.

**COUNT I—FRAUD IN THE INDUCEMENT**

*Shlasinger and Gerardi v. Yarrington*

49. Plaintiffs re-state and re-allege the averments made in Paragraphs 1 through 48 as if fully set forth herein.

50. This is a cause of action for fraud in the inducement.

51. Shlasinger and Gerardi assert that Yarrington made material and false representations to manipulate Shlasinger and Gerardi into executing the Operating Agreement. Specifically, Yarrington falsely represented that:

- (i) He would invest up to one hundred thousand dollars (\$100,000.00) into Zap'd Games on an as-needed basis for the operation of the Store;
- (ii) He would facilitate Zap'd Games' use of Myriad's distribution, payroll, website, purchasing and other resources to the benefit of Zap'd Games; and
- (iii) He would maintain the financial accounts of Myriad and Zap'd Games as entirely separate and distinct entities with their only shared interest being that of the Store.

52. Yarrington made these representations intending to defraud Shlasinger and Gerardi into entering a three (3) way Partnership whereby he would be able to capitalize on Shlasinger's investment to the benefit of Myriad, profit Myriad by overcharging Zap'd Games for the cost of the Store's inventory and access monies belonging to Zap'd Games and the Store.

53. Shlasinger and Gerardi reasonably relied on Yarrington's representations given their mutual interests in the industry and Yarrington's operation of two (2) allegedly successful Myriad retail stores.

54. Shlasinger and Gerardi each have been damaged as a result of Yarrington's actions in excess of seventy-five thousand dollars (\$75,000.00). Specifically, Shlasinger lost his entire capital contribution of one hundred thousand dollars (\$100,000.00). Gerardi has been damaged by lost wages as a result of Yarrington's unauthorized firing of him and additionally the loss of his one third share of profits after Shlasinger and Myriad's total contributions were satisfied. Further, Yarrington clandestinely shut down an otherwise valuable and potentially profitable asset in the Store without the requisite authority and took possession of any and all inventory within the Store that was purchased by Zap'd Games for the Store.

WHEREFORE, Shlasinger and Gerardi respectfully request judgment be entered against Yarrington for fraud in the inducement and award Shlasinger and Gerardi damages resulting therefrom.

**IN THE ALTERNATIVE COUNT II—BREACH OF CONTRACT**

**Shlasinger and Gerardi v. Yarrington**

55. Shlasinger and Gerardi re-state and re-allege the averments made in Paragraphs 1 through 48 as if fully set forth herein.

56. This is a cause of action for breach of contract arising from the Operating Agreement.

57. On June 25, 2012, Shlasinger, Gerardi, and Yarrington executed a valid and enforceable Operating Agreement which created Zap'd Games. Further, the Operating Agreement set forth the appropriate procedures for conducting business and appointed Shlasinger as Chief Executive Officer and Managing Member, Gerardi as Treasurer and Member, and Yarrington as Secretary and Member.

58. Yarrington breached the Operating Agreement and provisions therein in the following manner:

- (i) He failed to maintain books and records, including financial statements of Zap'd Games, and failed to keep said records open for inspection by Shlasinger and Gerardi in violation of Article IV, Section 4.2;
- (ii) He took out a sixty-five thousand dollar (\$65,000.00) line of credit in favor of Myriad against contributions and monies belonging to Zap'd Games' in violation of Article VI, Section 6.1(6), which limited the authority to bind Zap'd Games by borrowing funds to Shlasinger as Managing Member;
- (iii) He misappropriated Shlasinger's investment monies for the Store's liabilities in violation of Article VI, Section 6.2 which provided that no Member shall be liable for the liabilities of Zap'd Games;
- (iv) He failed to indemnify Zap'd Games in violation of Article VI, Section 6.3 for the costs and damages incurred by his unauthorized action in taking out a sixty-five thousand dollar (\$65,000.00) line of credit for Zap'd Games;
- (v) He failed to account to Zap'd Games and hold as trustee for it the profit, property and benefit derived by him, without the consent of Shlasinger and Gerardi, in winding up Zap'd Games and the Store in April 2014 and failure to account for profits derived from Zap'd Games' use of Myriad's inventory services in violation of Article VI, Section 6.5(a) requiring the avoidance of conflicts of interest;
- (vi) He failed to reimburse Shlasinger for use of his monies to pay for Zap'd Games' expenses in violation Article VII, Section 7.10 requiring Zap'd Games reimburse the Managing Member for expenses incurred in the operation of Zap'd Games;
- (vii) As authorized agent for Myriad, he failed to make the one hundred thousand dollar (\$100,000.00) initial capital contribution he obligated Myriad would make into Zap'd Games or unlawfully withdrew said monies in violation of Article VIII, Section 8.1 describing Zap'd Games' initial capital contributions;
- (viii) He failed to maintain a separate capital account for each Member as required by Article VIII, Section 8.4 which required a separate capital account be maintained for each Member throughout the term of Zap'd Games;

- (ix) He withdrew monies from Zap'd Games' capital account in favor of Myriad and in direct violation of Article VIII, Section 8.5;
- (x) He failed to perform any procedures set forth in Article VIII, Section 9.9 describing the winding up of Zap'd Games and calculation of net gains, net losses and distributions and or adjustments;
- (xi) He usurped authority to fire Members from Shlasinger as Managing Member by terminating Gerardi and preventing him access to Zap'd Games' accounts in violation of Article XII, Section 12.1;
- (xii) He unilaterally attempted to conduct the winding up of Zap'd Games without authority and in doing so unequivocally disregarded any of the proper procedures for accounting of assets and liabilities and distribution of assets in an appropriate manner set forth in Article XIII, Section 13.3;

59. As a result of Yarrington's numerous breaches of the Operating Agreement, Shlasinger and Gerardi each have incurred damages in excess of one hundred thousand dollars (\$100,000.00), including, but not limited to, capitalization, unpaid wages, expectation interest, consequential and incidental damages, loss of inventory and fixtures, and attorney's fees in pursuing this legal action.

WHEREFORE, Shlasinger and Gerardi respectfully request judgment be entered against Yarrington for breach of contract and Shlasinger and Gerardi be awarded damages resulting therefrom.

**JURY TRIAL DEMAND**

The Plaintiffs demand a trial by jury.

Dated: July 8, 2016

Respectfully submitted by,

/s/ HOWARD A. ROEVER

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