

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. \_\_\_\_\_

THE LOPATIN LAW FIRM P.C.,  
a California professional corporation,

Plaintiff

v.

EGGNATZ PASCUCCI, P.A.,  
a Florida professional association,  
JOSHUA H. EGGNATZ, an individual,  
MICHAEL J. PASCUCCI, an individual, and  
EGGNATZ, LOPATIN, & PASCUCCI, LLP,  
a Florida limited liability partnership,

Defendants.

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**COMPLAINT**

Plaintiff, The Lopatin Law Firm, P.C. (“**Lopatin**”), sues Defendants, Eggnatz Pascucci, P.A. (“**EPPA**”), Joshua H. Eggnatz (“**Eggnatz**”), Michael J. Pascucci (“**Pascucci**”), and Eggnatz, Lopatin, & Pascucci, LLP (“**ELP**”) (collectively, the “**Defendants**”), and alleges:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, Lopatin, is a professional corporation incorporated under the laws of the State of California and is domiciled in California.

2. Defendant, EPPA, is a professional association organized under the laws of the State of Florida with its domicile located in Broward County, Florida.

3. Defendant, Eggnatz, is a citizen of the State of Florida, is over the age of eighteen, and is otherwise *sui juris*.

4. Defendant, Pascucci, is a citizen of the State of Florida, is over the age of eighteen, and is otherwise *sui juris*.

5. Defendant, ELP, is partnership formed under the laws of the State of Florida its principal place of business located in Broward County, Florida.

6. This Court has jurisdiction over this matter because there is complete diversity and this action includes a claim for damages in excess of Seventy-five Thousand Dollars (\$75,000.00), exclusive of interest, costs, and attorneys' fees.

7. Further, all of the parties hereto have consented to submit the claims alleged herein to the jurisdiction of this Court.

8. Venue is appropriate in this forum because the causes of action of the Defendants reside in the Southern District of Florida, as well as because a substantial part of the events or omissions giving rise to the claims alleged herein occurred.

9. All conditions precedent to bringing this action have occurred, been performed, or have otherwise been fulfilled; or their performance has been excused or waived.

10. Lopatin has retained the services of undersigned counsel for the purpose of bringing and maintaining this action, and has obligated itself to pay a reasonable fee for the costs and legal services associated with same.

#### **GENERAL ALLEGATIONS**

11. Lopatin is a California-based law firm. EPPA is a Florida-based law firm.

12. Lopatin's principal, Benjamin Lopatin, and EPPA's principals, Eggnatz and Pascucci, attended Nova Southeastern School of Law together and were friends as a result.

13. In or around October 2014, they agreed to form a law firm consisting of both Lopatin and EPPA.

14. In or around October 2014, and in accordance with the foregoing, they formed ELP—a general partnership co-owned by Lopatin and EPPA, with each of the foregoing holding a 50% interest in ELP.

15. At or about the same time, ELP and EPPA entered into an oral partnership agreement which the parties reduced to writing in April 2015 (the “**Partnership Agreement**”). A true and correct copy of the Partnership Agreement is attached hereto as Exhibit “A.”

16. Pursuant to the Partnership Agreement was initially managed by EPPA’s two principals—Eggnatz and Pascucci—as well as Lopatin’s principal (collectively, the “**Managing Partners**”).

17. Yet Eggnatz and Pascucci asserted near total control in derogation of the Partnership Agreement; and on information and belief, withheld material information from Lopatin despite repeated requests.

18. The Partnership Agreement requires that the Managing Partners prepare and approve by unanimous consent a compensation schedule each year to allocate the net profits and losses of EPL.

19. At no time material did the Managing Partners prepare or unanimously approve same.

20. As a result, the Partnership Agreement requires that ELP’s net profits and losses be allocated fifty percent (50%) to each of Lopatin and EPPA.

21. ELP, at the sole direction of Eggnatz and Pascucci, failed to so allocate ELP’s net profits.

22. Further, at the sole direction of Eggnatz and Pascucci, incurred unreasonable expenses on ELP’s behalf that were not disclosed to Lopatin or accounted for.

23. At some point prior to 2017, Eggnatz and Pascucci instead caused EPL to allocate same 2/3 to EPPA and 1/3 to Lopatin. In other instances, Lopatin was paid using what appears to be no set formula at all. And in some cases, Lopatin was not even paid on specific matters.

24. Eggnatz and Pascucci also caused ELP to make improper distributions consistent with the foregoing in violation of the Partnership's requirement that distributions were not to be made without written consent of both Lopatin and EPPA and there being an absence of same.

25. Further, Eggnatz and Pascucci improperly caused ELP to incur costs in derogation of the Partnership Agreement.

26. When Lopatin and its principal brought this to the attention of Defendants, he was rebuked.

27. Eggnatz, Pascucci, and EPPA thereafter attempted to dissolve ELP without authority and not in accordance with the permissible reasons for dissolution set forth in the Partnership Agreement.

28. Recognizing that continuing to remain in a partnership with EPPA that was controlled by EPPA's principals, on August 21, 2017, Lopatin provided notice pursuant to Section 15.3 of the Partnership Agreement that it was withdrawing as a partner from ELP, and requested that Eggnatz and Pascucci provide access to documents necessary to comply with the Partnership Agreement's dissociation procedures.

29. Eggnatz and Pascucci refused to comply.

30. The Partnership Agreement provides that, upon such notice, Lopatin shall cease to be a partner and shall be disassociated from ELP ninety (90) days thereafter.

31. Upon notice of dissociation, Section 16.1 of the Partnership Agreement, required ELP to "purchase or redeem from the Member (or the estate of such Member, as the case may be),

and the Member (or the estate of such Member, as the case may be) shall sell and transfer to the Company, all of the Membership Interest of such dissociated Member for a purchase price as determined below (the "Purchase Price")[.]”

32. The "Purchase Price" of the Dissociating Member's Interest was to be determined by agreement between the Managers, the remaining Members, and Dissociating Member. If such an agreement was not reached within thirty (30) day the Partnership Agreement set forth the following:

If an agreement on the Purchase Price is not reached within thirty (30) days following the election to purchase the Units of the Dissociating Member, the Units shall be valued by an independent third party appraiser selected by the Managers who is reasonably acceptable to the Dissociating Member, and the Purchase Price will be the value determined in that appraisal. In appraising the Unit to be purchased, the appraiser shall determine the fair market value of the Unit as of the date of the event of Dissociation. For all purposes in determining the Purchase Price of the Unit, the value shall be based on:

(a) The then value of the Assets of the Company; together with the Ongoing Cases Value as defined below.

(b) The "Ongoing Cases Value" shall be determined as follows:

- i. If the event of Disassociation occurs during the Pre-Suit Phase of a Case, the Disassociated Member shall be entitled to receive ten percent (10%) of the Net Profits actually received by the Company for that Case;
- ii. If the event of Disassociation occurs during the Litigation Phase of a Case, the Disassociated Member shall be entitled to receive twenty-five percent (25%) of the Net Profits actually received by the Company for that Case;
- iii. If the event of Disassociation occurs after a settlement agreement is entered into or a verdict is entered in a Case, the Disassociated Member shall be entitled to receive fifty percent (50%) of the Net Profits actually received by the Company for that Case.

33. Eggnatz and Pascucci did not even attempt to comply with Section 16.1

34. In fact, Eggnatz, Pascucci, and their law firm, EPPA, immediately began acting as if EPL had ceased operation and been dissolved.

35. For example, on or before, September 9, 2017, EPPA sought to retain expert counsel for a lawsuit that was supposed to have been handled by ELP.

36. Lopatin and its principal—one of the three Managing Partners of ELP—also became prevented from having access to ELP's complete books and records.

37. As a result, on September 6, 2017, Lopatin counsel requested access to ELP's books and records pursuant to section 620.8403, Florida Statutes, and Section 23.3 of the Partnership Agreement. A true and correct copy of the foregoing is attached as Exhibit "B".

38. ELP, Eggnatz, and Pascucci refused to comply, and as a result, Lopatin cannot ascertain the full amount of its damages.

39. On October 12, 2017, Lopatin received correspondence from Eggnatz purportedly on ELP's behalf enclosing a disbursement of forty thousand nine hundred sixteen dollars and seventy-two cents (\$40,916.72) for payments made on certain cases. Eggnatz also stated ELP was dissolved, the wind-up process had been completed, and enclosed a check for one hundred forty-nine thousand six hundred ninety-seven dollars and thirty cents (\$149,697.30), however, ELP never actually received that check.

40. As such, Eggnatz and Pascucci wholly failed to abide by the terms of Section 16.1 and, once again, violated the terms of the Partnership Agreement.

**COUNT I**  
**Breach of Contract**  
(Against ELP)

Lopatin realleges and incorporates the allegations contained in Paragraphs 1 through 40 as if set forth fully herein.

41. Pursuant to the Partnership Agreement, ELP was not to allocate net profits and losses other than 50% to each of Lopatin and EPPA absent unanimous written consent of the Managing Partners.

42. Further pursuant to the Partnership Agreement, ELP was not to make distributions other than 50% to each of Lopatin and EPPA absent unanimous written consent of the Managing Partners.

43. Despite the lack of unanimous written consent, ELP breached the Partnership Agreement by, without limitation, allocating net profits and losses other than 50% to each of Lopatin and EPPA absent unanimous written consent of the Managing Partners and making distributions consistent therewith.

44. ELP has also breached the Partnership Agreement by failing to keep a proper

45. Lopatin has been damaged as a result.

**COUNT II**  
**Breach of Contract**  
(Against EPPA)

Lopatin realleges and incorporates the allegations contained in Paragraphs 1 through 40 as if set forth fully herein.

46. EPPA and Lopatin are each parties to the Partnership Agreement.

47. Pursuant to the Partnership Agreement, EPPA was not to receive distributions in excess of 50% of the net profits unanimous written consent of the Managing Partners.

48. Despite the lack of unanimous written consent, EPPA breached the Partnership Agreement by, without limitation, accepting distributions in excess of that permitted thereunder.

49. Lopatin has been damaged as a result.

**COUNT III**  
**Breach of Fiduciary Duty**  
(Against EPPA)

Lopatin realleges and incorporates the allegations contained in Paragraphs 1 through 40 as if set forth fully herein.

50. EPPA owes Lopatin certain fiduciary duties as Lopatin's partner.

51. EPPA breached its fiduciary duties by, among other things (i) accepting distributions in excess of that permitted under the Partnership Agreement; and (ii) engaging in the practice of law with the Partnership Agreement remained in effect.

52. Lopatin has been damaged as a result.

**COUNT IV**  
**Breach of Fiduciary Duty**  
(Against Eggnatz and Pascucci)

Lopatin realleges and incorporates the allegations contained in Paragraphs 1 through 40 as if set forth fully herein.

53. As Managing Partners of ELP, Eggnatz and Pascucci owed Lopatin certain fiduciary duties.

54. Eggnatz and Pascucci breached those duties to Lopatin by, without limitation (a) failing to properly allocate ELP's net profits and losses; (b) causing ELP to over-distribute net profits to their own law firm—EPPA; (c) failing to provide Lopatin with access to ELP's books and records; (d) improperly causing ELP to be wound up and dissolved; and (e) practicing law through EPPA despite ELP not having been dissolved.

55. Lopatin has been damaged as a result of the foregoing.



**COUNT V**

**Accounting**

(Against ELP, Eggnatz, and Pascucci)

Lopatin realleges and incorporates the allegations contained in Paragraphs 1 through 40 as if set forth fully herein.

56. As a partner of ELP, Lopatin is entitled to an accounting of ELP's affairs.

57. As ELP's Managing Partners in control, Eggnatz and Pascucci are required to account to Lopatin.

58. Eggnatz, Pascucci, and ELP are required to maintain accurate accounting records for ELP.

59. Eggnatz, Pascucci, and ELP have failed or refused to provide same to Lopatin.

60. Lopatin accordingly demands a full and complete accounting of all monies obtained by, disbursed to or from, transferred to, or transferred from ELP.

**COUNT VI**

**Demand for Inspection of Books and Records**

(Against ELP, Eggnatz, and Pascucci)

Lopatin realleges and incorporates the allegations contained in Paragraphs 1 through 40 as if set forth fully herein.

61. On or around counsel for Lopatin made a good faith demand on behalf of Lopatin for access to inspect and copy ELP's books and records (the "**Records Inspection Demand**") pursuant to section 620.8403, Florida Statutes, and Section 23.3, of the Partnership Agreement.

62. Eggnatz and Pascucci has ignored the Records Inspection Demand, and otherwise refused to comply with their obligations under both Florida law and the Partnership Agreement.

63. Lopatin is accordingly entitled to the entry of an Order permitting the inspection of ELP's books and records.

**COUNT VII**  
**Declaratory Relief**

Lopatin realleges and incorporates the allegations contained in Paragraphs 1 through 40 as if set forth fully herein.

64. This is an action for declaratory relief.

65. There is a bona fide, actual, present practical need for a declaration of ELP's value and the ongoing case value.

66. On August 21, 2017, Lopatin Law provided notice of his dissociation and, therefore, continued to be a Partner of ELP for an additional ninety (90) days after the notice.

67. Pursuant to Section 16.1 Partnership Agreement, Lopatin Law is entitled to an appraisal of ELP assets and ongoing case value in order to determine the Partnership's value as governed by the Partnership Agreement.

68. On October 13, 2017, Eggatz, provided noticed that he had dissolved and winded up ELP and disposed of its assets in violation of the Partnership Agreement.

69. As such, an action for declaratory relief is necessary to determine whether ELP was, in fact, dissolved on the date Eggatz stated, as well as to determine the value Lopatin's Membership Interest pursuant to the Partnership Agreement and that ELP shall pay to Lopatin such value pursuant to Article 16 of the Partnership Agreement.

70. Lopatin's privileges or rights as a Partner of EPL are dependent upon the facts or law applicable to the facts.

71. Lopatin has, or reasonably may have, an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

72. The antagonistic and adverse interest(s) are all before the Court by proper process.

73. The relief Lopatin seeks is not merely giving of legal advice or the answer to questions propounded for curiosity.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, The Lopatin Law Firm, P.C., demands judgement in its favor against the Defendants providing:

- (a) Damages;
- (b) That Lopatin be provided with full and complete access to ELP's books and records;
- (c) That ELP and EPPA be made to account to Lopatin;
- (d) An appraisal of ELP assets and ongoing case value;
- (e) A judicial declaration that ELP has not been properly dissolved;
- (f) A judicial determination as to the value of Lopatin's Membership Interest pursuant to the Partnership Agreement and that ELP shall pay to Lopatin such value pursuant to Article 16 of the Partnership Agreement;
- (g) Costs;
- (h) Attorneys' fees; and
- (i) Such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Lopatin hereby demands trial by jury on all issues so triable.

Dated this 29<sup>th</sup> day of December, 2017.

Respectfully submitted,

**KAPLAN YOUNG & MOLL PARRÓN PLLC**

*Attorneys for Plaintiff*  
Brickell World Plaza  
600 Brickell Avenue  
Suite 1715  
Miami, Florida 33131  
Tel: (305) 531-2424  
Fax: (305) 531-2405

By: /s/ Justin B. Kaplan  
JUSTIN B. KAPLAN, ESQ.  
Florida Bar No. 0033725  
*jkaplan@kymplaw.com*