

Buckingham continued “for decades, the band members have associated together as Fleetwood Mac to engage in the business of, among other things, recording and selling sound recordings, and performing their music for audiences around the world, making them partners in the Fleetwood Mac partnership.”

According to Buckingham, because Fleetwood Mac is a partnership, there are two significant consequences. First, “as partners ... each of the partners are obligated as fiduciaries to act with the highest duty of good faith toward the other partners and owes the other partners the duty of loyalty and care.” Second, Buckingham contends that under the California Corporate Code, “absent a written partnership agreement, no partner in Fleetwood Mac may be terminated from the partnership without cause.”

Now, can this be true? Expulsion of members (usually drummers) from rock bands is so common that it is almost an art form. Axl Rose alone expelled the original lineup of Guns ‘n Roses, and several subsequent ones, in their entirety. Even Buckethead got the axe. While Axl’s now back with the original band, we’ll see how long that lasts.

But at least under Pennsylvania law (not applicable to Buckingham’s case), Buckingham may have a point, because there is a fairly low burden to establish a partnership and the resulting fiduciary duties of, among other things, loyalty and good faith. For example, under 15 Pa.C.S.A. Section 8311 (a), a partnership in Pennsylvania is merely “an association of two or more persons to carry on as co-owners a business for profit.” In this determination: “The existence of a partnership depends upon the intentions of the parties as to being partners and ... no formal or written agreement need be executed in order for a valid partnership to exist ... There is no requirement that partnership agreements be in writing. They may be made orally or may be found to exist by implication from all attending circumstances (i.e., the manner in which the alleged partners actually conducted their business, etc.),” see *DeMarchis v. D’Amico*, 637 A.2d 1029, 1033 (Pa.Super. 1994).

Generally, a “person [such as Buckingham] who receives a share of the profits of a business is presumed to be a partner in the business.”

Where a partnership is found to exist, all partners are obligated to act with the utmost good faith in furtherance and advancement of the interests of the partnership, *McDermott v. Party City*, 11 F.Supp.2d 612, 627 (E.D.Pa. 1998), self-dealing and diversion of partnership funds constitutes a breach of fiduciary duty, and all property of the partnership is owned jointly by all partners. Moreover, “every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by [a partner] without the consent of the other partners from any transaction connected with the formation [or] conduct ... of the partnership or from any use ... of its property.”

Further, like California, in Pennsylvania it is generally true that without a written partnership agreement, a partner cannot be removed from the partnership without cause. Even where cause exists, a judicial order is required.

What this means for Buckingham is if Pennsylvania law applied to his case, and the facts alleged by him are true, he would have a very good argument that Fleetwood Mac was indeed, by definition, a partnership, giving rise to fiduciary duties of loyalty and good faith, precluding Fleetwood Mac from excluding him from the tour, and requiring it to hold his share of all profits in trust for him. This could be true even if the band’s members never thought of themselves as a partnership. In fact, in

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Pennsylvania it may well be the case that most rock bands like Fleetwood Mac or Guns 'n Roses are partnerships by definition and, once formed, none of band members can be removed from the band absent cause and a court order. Someone should tell this to Slash the next time he's fired by Axl.

What this means for Pennsylvania business owners and entrepreneurs is different. In engaging in business venture alongside another person or entity, the burden to establish a partnership or joint venture, giving rise to fiduciary duties, is low. Therefore, before engaging in a transaction that could be construed as a partnership or joint venture, if the parties do not wish to bind themselves to formal obligations, the absence of a partnership and fiduciary duties should be memorialized in writing and specifically disclaimed by agreement.

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