
6)

===== Start of Answer #6 (865 words) =====

(1) The Man's Withdrawal From The Partnership

The man's withdrawal from the partnership was proper and effective.

The first issue is whether there was a partnership recognizable under the law based on the informal arrangement between the man and the woman. Under the RUPA, a partnership need not be formally established in order to be recognized as a partnership under the law. When two or more people or entities express the intention to be deemed a partnership or manifest their intention to be deemed a partnership by holding themselves out to be working cooperatively in a business enterprise, courts will recognize the formation of a partnership. In determining whether a partnership has been established where there has been no express agreement to form a partnership, the court will look to various factors to determine whether the purported partners in the partnership manifested the intention to pursue a joint enterprise with the other purported partners. These factors include (1) the length of time that the parties have been working together in the business endeavor; (2) the commercial nature of the business endeavor, *i.e.*, whether the goal of the relationship was to procure a financial gain by providing some service to the public; (3) the way in which the parties held themselves out in connection with pursuing the business endeavor; and, (4) the financial interest that the partners held in the business enterprise relative to one another; and, (5) whether the partners deemed one another equals for purposes of management of the business endeavor and for distribution of profits and/or allocation of responsibility for losses. Absent an express agreement to form a partnership, the court will not treat any single factor as dispositive and instead will evaluate the totality of the circumstances to reach a conclusion about the existence of a partnership. Here, the purpose of the man's and woman's business relationship was to sell natural foods to the public and earn a profit from doing so. The man and the woman had been engaged in this joint business venture for many years, which counsels in favor of acknowledging a formal business relationship between them even in the absence of a written agreement. The man and the woman held themselves out as a single business rather than as two separate businesses, and thus provided the market with the impression that they were working in concert on the business endeavor. The man and the woman shared responsibilities for the business and each brought a valuable need to the relationship that the other party did not, *e.g.*, the man managed the business but did not regularly supply capital whereas the woman provided capital as needed but did not

participate in the day-to-day management. Finally, as the man demonstrated by sending the woman a check for exactly one-half of the store's inventory and other business assets, the man regarded the woman as his equal in terms of ownership of the natural-foods store. These factors collectively are sufficient for a court to conclude that a partnership was formed based on the informal arrangement of the parties and based on their demonstrated intention to create a partnership for purposes of the natural-foods store.

(2) The Legal Effect Of The Man's Withdrawal From The Partnership

The man's withdrawal from the partnership had the legal effect of dissolving the partnership.

The next issue is whether the man effectively withdrew from the partnership. A partnership may be dissolved when any partner dissolves the partnership. Under the RUPA, withdrawal from a partnership is effective when either (1) the partner affirmatively states the intention to wind up the business and dissolve the partnership, or (2) the partner takes affirmative steps to wind up the business and dissolve the partnership such as by apportioning the partnership assets and distributing them to the partners in proportion to their equity share. An affirmative statement that a partner intends to withdraw from the partnership must be in writing and a court will regard an email to the remaining partners as a writing sufficient for this purpose. Additionally, even if the court were not to honor the man's email statement about dissolving the partnership, the court will look to the man's actions to conclude that clearly he intended to terminate the partnership with the woman. The man demonstrated the intention by apportioning the value of the partnerships assets equally among the partners, *i.e.*, the man and the woman, and then by distributing the proportionate share of the partnership assets to the woman. The man properly withdrew from the partnership.

(3) Breach Of Duties By The Man's Purchase Of The Building

The man breached the duty of fair dealing by purchasing the building.

The issue is whether the man owed a duty to the woman as his partner. Under the RUPA, partners have fiduciary responsibilities to one another. Conduct that is inherently competitive to the partnership is a breach of the duty of loyalty and the duty of fair dealing. David's purchase of the building and continued operation of a natural-foods store from the building is conduct undertaken to the detriment of his partner, therefore David breached the duty of loyalty and the duty of fair dealing to his

partner.

Question #6 Final Word Count = 865
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