

## SJC Reinforces the Importance of Written Agreements Among Shareholders

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In *Merriam v. Demoulas Super Markets, Inc.*, 464 Mass. 721 (2013), the Supreme Judicial Court reaffirmed the importance of carefully negotiating and crafting agreements regarding shareholder rights and duties in closely held corporations.

Closely held corporations typically have a small number of shareholders and most or all actively participate in the corporation's affairs. These shareholders must treat each other with the utmost good faith and loyalty. These standards of behavior are referred to as the shareholders' fiduciary duties.

### Parties differ on obligations for sale of shares

In *Merriam*, several minority shareholders offered to sell their shares to the corporation. Once the corporation rejected this offer, these shareholders brought suit to obtain a declaration from the court that they could sell their shares as they saw fit in accordance with a previous agreement in the corporation's articles of organization. The corporation argued that its shareholders, consistent with their fiduciary duties to the corporation, 1) could not sell their shares to any buyer who would imperil the corporation's subchapter S tax status, a status that had favorable tax implications for the other shareholders and the corporation and 2) were obligated to reoffer their shares to the corporation before selling the shares to a third party. The court ruled that the shareholders had already agreed on procedures to be followed for the sale of shares. Because the restrictions demanded by the corporation went beyond the scope of the restrictions written and already agreed upon, the court ruled that the selling shareholders did not have a fiduciary duty to act to maintain the S tax status or reoffer their shares.

### What lessons are learned from *Merriam*?

Massachusetts courts will enforce an agreement between shareholders, whether the agreement is contained in a corporation's articles of organization, bylaws or a separate contract. Here, the shareholders' good faith compliance with the articles of organization satisfied the shareholders' fiduciary duties. Since the articles of organization did not require the shareholders to maintain the S-corporation status or to reoffer their shares to the corporation, the court refused to impose fiduciary duties beyond those found in the parties' written agreement, in this case the articles of organization.

### Written fiduciary agreements can protect all parties

Changes in ownership or management over the life of an entity are likely, yet are often unpredictable. Not planning for such contingencies during the organization of the company can have major consequences later when change happens. Shareholders can define the scope of their fiduciary duties through agreements and Massachusetts courts will enforce those agreements. Closely held corporations and their shareholders should keep this in mind and set forth their duties to one another in written agreements.

## In the Field

### State court sentencing program addresses white-collar advocacy

Laredo & Smith Partner Mark Smith joined Hon. Carol S. Ball, Hon. Frances A. McIntyre, James H. O'Brien, and Penny Haney, PhD as speakers at the May 15 Boston Bar Association Criminal Law Section seminar on state court white-collar sentencing.

The group discussion included sentencing and disposition strategy in white-collar cases and strategy for using the lobby conference to enhance sentencing advocacy. "A criminal conviction can be devastating for a business client, so sentencing advocacy in such cases is absolutely essential," said Smith.

### High schools participate in Law Day Initiative

Laredo & Smith Partner Marc Laredo served as co-chair of the Massachusetts Bar Association Law Day committee. Attorneys celebrated Law Day in May with presentations at nine high schools from Amherst to Fall River. This year's topic was human trafficking and modern day slavery, "Realizing the Dream: Equality for All," honoring the 150<sup>th</sup> anniversary of the Emancipation Proclamation.

### Racing for heart health

Associate Jessica Yau ran the Lawyers Have Heart 5K Boston Road Race May 28 to benefit the American Heart Association.