

**Attorneys
Partner**

• Donald S. Zakarin

Pryor Cashman Wins Arbitration for Client Coqui Capital, LLP, Defeats SBA

Pryor Cashman successfully defended client Coqui Capital, LLP in an arbitration brought by the Small Business Administration ("SBA"), winning dismissal of all of the SBA's claims against the client.

Coqui Capital, LLP was a Small Business Investment Corporation ("SBIC") licensed by the SBA. SBIC's, which are designed to invest in small start up businesses with financing provided by the SBA, have a high failure rate. The cases are legion in which the SBA has instituted receivership proceedings against failed SBIC's and seeks to recover unpaid capital from limited partners.

In the case of Coqui, the SBA instituted a Receivership and thereafter sued all of the limited partners for alleged unpaid and committed capital of in excess of \$5 million. In the first instance, Pryor Cashman successfully moved to dismiss the lawsuit in the Receivership Court based on an arbitration provision contained in the Limited Partnership Agreement.

When the SBA then commenced an arbitration proceeding under the auspices of the American Arbitration Association in New York, Pryor Cashman moved to dismiss all of the claims based on several grounds, including a five year limit on capital calls set forth in the Subscription Agreements signed by the limited partners. The SBA opposed the motion, claiming that the five year limit on capital calls was overridden by the terms of the amended limited partnership agreement, which allegedly was inconsistent with the subscription agreements.

In a lengthy and reasoned opinion, the arbitrator in January 2010 granted Pryor Cashman's motion to dismiss all of the SBA's claims against the limited partners, holding that all claims for unpaid capital were barred by the five year limitations period for capital calls set forth in the subscription agreements.

Donald Zakarin, Chairman of Pryor Cashman's Litigation Group, represented Coqui in all of the proceedings.