

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

J. ARMAND MUSEY,

Petitioner,

Index No.

-against-

VERIFIED PETITION

425 EAST 86 APARTMENTS CORP.,

Respondent.

Petitioner J. Armand Musey, (“Petitioner”), by his undersigned counsel of record, alleges as follows:

1. This petition (the “Petition”) is brought pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”).
2. Respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business located in the County of New York. Respondent owns real property located at 425 East 86th Street, New York, New York (the “Building”).
3. Petitioner is a shareholder in Respondent and a resident of the Building, pursuant to a proprietary license. Petitioner entered into a contract of sale to purchase the shares, referable to apartment PHA at the Building on December 13, 2012. This purchase closed on February 27, 2013.
4. In late 2015, Petitioner’s concerns regarding his investment in Respondent led him to seek access to Respondent’s books and records, which access was denied by Respondent. In furtherance of his right to access books and records, Petitioner filed a Petition pursuant to CPLR Article 78 on January 14, 2016, a copy of which is annexed to the Affirmation of Stephanie A. Prince, (“Prince Aff.”) as Exhibit 1.

5. In an order entered on April 18, 2016, this Court dismissed Petitioner's January 14, 2016 Petition without prejudice, stating that Petitioner had not yet identified specific materials and as such, Petitioner's claim was premature. *See Prince Aff. Ex. 2.*

6. On April 21, 2016, Petitioner sent to Respondent a letter requesting specific categories of documents, stating his reasons for seeking those specific documents, and provided an affidavit of good faith. Affidavit of J. Armand Musey, ("Musey Aff."), Ex. 1. Respondent responded to Petitioner on May 3, 2016, setting forth the categories of documents Respondent was willing to let Petitioner review, which categories excluded the income side of Respondent's general ledger, and stated that those documents would be available for Petitioner to review, in hard copy only, on May 23, 2016. *Musey Aff. Ex 2.* As such, Respondent's May 3, 2016 letter constitutes a final decision concerning Petitioner's right to inspect the income side of the ledger, which is a part of Respondent's "full and correct books of account."

7. On May 6, 2016, Petitioner agreed to review the subset of documents outlined by Respondent and reserved his right to view additional documents. *Musey Aff. Ex 3.* By letter dated May 9, 2016, Respondent denied Petitioner the ability to have any agent present on his behalf to assist in the review and denied Petitioner the ability to scan or copy any of Respondent's documents. *Musey Aff. Ex 4.* As such, Respondent's May 9, 2016 letter constitutes a final decision concerning Petitioner's ability to scan, copy or photograph documents or to have an attorney or accountant assist him in his review.

8. On May 23, 2016, Petitioner reviewed Respondent's documents at Respondent's office. *Musey Aff., ¶ 13.* While Petitioner's partner and co-habitant was initially denied access to the documents, after counsel intervened, Respondent agreed to allow her to assist Petitioner in his review. *Musey Aff. ¶ 13.*

9. Petitioner's May 23 review created more questions than it answered, and Respondent continues to deny Petitioner the right to electronic versions of documents, make copies of documents, and to have a representative present during his review, except for his partner and co-habitant. The amount, nature and complexity of documents provided made it impossible for Petitioner to complete his review on May 23. Musey Aff. ¶ 14. Further, some of the documents provided, including spreadsheets and certain financial statements, simply cannot be understood in hard copy. Musey Aff. ¶ 14. Indeed, observing the superficial requirement of allowing Petitioner to look at hard copies, but not allowing him to make copies of pertinent material for later review, or examine electronic versions of documents that cannot be understood in hard copy - including the expense side of the general ledger with literally thousands of entries that purport to reconcile with the Co-op's purported aggregate expenses - nullifies the purpose behind allowing a shareholder to review corporate documents in the first instance. Musey Aff. ¶ 14. Further, providing Petitioner with only the expense side of the general ledger violates paragraph 5 of the proprietary lease, which clearly states that Petitioner is entitled to inspect the "full and correct books of account," which includes the income side of the general ledger. Musey Aff. Ex. 7. Of course, it is impossible to reconcile to the Co-op's financials with only the expense side of the general ledger.

10. The four-month statute of limitations set forth in section 217 of the CPLR will expire on September 23, 2016, pursuant to a tolling agreement between the parties. Prince Aff. Ex. 3. Therefore, on August 23, 2016, Petitioner sent a letter to Respondent, addressing his

concerns in his investment in Respondent and delineating certain categories of documents he had not yet been given the opportunity to view.¹ Musey Aff. Ex. 5.

11. On September 13, 2016, Respondent replied to Petitioner's August 23 letter, inviting Petitioner to continue his May 23 review of documents, but reiterating its previous denial of Petitioner's right to scan or copy documents. Musey Aff. Ex. 6. Further, while Respondent purports to allow Petitioner to have his partner and cohabitant present during his inspection, Respondent denies Petitioner the right to any other representative, in spite of the fact that Petitioner's proprietary lease does not limit this right to only inhabitants of the Coop. Musey Aff. Ex. 6 and 7. Indeed, reconciling thousands of entries from the hard copy version of expense portion of the general ledger alone would require a team of analysts to manually re-enter and verify each item.

12. It could be argued that, in light of Respondent's September 13, 2016 letter, Respondent's May 3, 2016 denial of Petitioner's right to inspect the income side of the general ledger, a part of the "full and correct books of account" and Respondent's May 9, 2016 denial of Petitioner's right to duplicate documents were not final decisions under CPLR Article 78. However, in the face of the expiration of the parties' tolling agreement and out of an abundance of caution, Petitioner files the instant petition to protect his rights under New York Business Corporation Law § 624, New York common law, and Petitioner's proprietary lease to: (i) receive electronic versions of documents and to duplicate, scan or receive copies of documents; (ii) to have a representative present during his inspection of Respondent's documents; and (iii) to

¹ Without waiving any rights, Petitioner asserts that the August 23, 2016 letter and the filing of this petition have been done primarily to preserve his rights, specifically relating to the four (4) month statute of limitations pursuant to CPLR § 217.

inspect the income side of the general ledger, a part of the Respondent's "full and correct books of account."

13. Article 4 of the CPLR provides a device for challenging the actions of Respondent and enforcing Petitioner's rights under New York law. Petitioner has a clear right to the enforcement of, and compliance with, Section 624 of the New York Business Corporation Law, New York common law, and his proprietary lease.

14. Petitioner has no adequate remedy at law.

WHEREFORE, Petitioner respectfully requests that an Order be entered: (1) in accordance with New York Business Corporation Law Section 624 and New York common law, requiring Respondent to provide Petitioner with the income side of Respondent's general ledger, as a part of Respondent's "full and correct books of account"; electronic versions of documents, and allowing Petitioner to make copies of documents; (2) awarding costs and fees associated with the prosecution of this action to Petitioner; and (3) for such further and other relief the Court may deem just and proper.

Dated: New York, New York
September 23, 2016

GUZOV, LLC



By: _____
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VERIFICATION

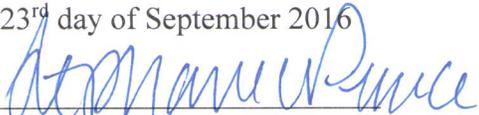
State of New York)
) ss.
County of New York)

J. Armand Musey, being duly sworn, deposes and says that deponent is the Petitioner in the within action; that deponent has read the foregoing Petition and knows the contents thereof; that the same is true to deponent's own knowledge, except as to those matters stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

As to those matters alleged upon information and belief, the source of deponent's information and the grounds for deponent's belief are investigative materials and records contained within deponent's files.



J. Armand Musey

Sworn to before me this
23rd day of September 2016


Notary Public

STEPHANIE A. PRINCE
Notary Public, State of New York
Registration #02PR6346224
Qualified In New York County
Commission Expires Aug 8 2020