

# BRAVERMAN | GREENSPUN

A PROFESSIONAL CORPORATION

April 5, 2016

*Via NYSCEF*

Hon. Gerald Lebovits  
Supreme Court of the State of New York  
New York County  
111 Centre Street, Room 731  
New York, New York 10013

Re: Musey v. 425 East 86 Apartments Corp.,  
(N.Y. Sup. Ct., N.Y. Co. Index No. 150369-2016)

Dear Justice Lebovits:

This firm is counsel to the respondent in the above-referenced proceeding. I write at this time in connection with Motion Sequence No. 002 – the respondent’s motion to dismiss the petition. As you may recall, the Court heard oral argument on the motion on March 16, 2016, after which the parties were encouraged to negotiate a stipulation wherein the petitioner would be provided access to agreed-upon books and records.

Unfortunately, although the respondent stands ready to provide all relevant documents, those negotiations have not resulted in an agreement, as the petitioner is now seeking access to twenty-seven (27) separate categories of documents, the substance and subject matter of which goes far beyond the concerns the petitioner testified in his verified petition and supporting affidavit formed the underlying basis for bringing the Article 78 proceeding in the first instance. The petitioner is seeking to engage in an impermissible “fishing expedition.”

At this juncture, it is requested that we take the Court up on its prior offer to enlist the assistance of your law clerk to bring this to a close, or to have the motion to dismiss decided. To provide the background and progress of the parties’ negotiations, enclosed is correspondence regarding same.<sup>1</sup>

Respectfully submitted,

  
Tracy Peterson

Encls.

cc: Stephanie Prince, Esq.  
(*via NYSCEF*)

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<sup>1</sup> As portions of the correspondence address the substance of the parties’ negotiations regarding settlement of this Article 78 proceeding and the related action filed under index number 157316/2014, those portions of the correspondence have been redacted.

## Tracy Peterson

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**From:** Stephanie Prince <sprince@guzovllc.com>  
**Sent:** Monday, March 21, 2016 3:08 PM  
**To:** Tracy Peterson  
**Cc:** Debra Guzov  
**Subject:** Musey v 425 East 86 - Books and Records List  
**Attachments:** Books and Records List 3.21.16.pdf

Tracy,

Attached, please find a list of categories of documents/books and records that my client is seeking. Please be advised that the time-frame for the sought-after categories is 2009 through the present. Please be further advised that Petitioner reserves the right to modify this list, including adding additional categories should material inconsistencies be found in the documents provided by your client.

Finally, we believe the parties should also stipulate to the Court retaining jurisdiction over the Article 78 proceeding, including but not limited to issues relating to discovery and any disputes arising from the stipulated categories of books and records, and the ultimate disposition of the matter.

Please let me know whether you have any questions regarding the attached. If there are no issues with the attached, we will draft a stipulation including the list and the above statements and send it to you for review and signature.

Best regards,

Stephanie

Stephanie A. Prince, Esq.  
GUZOV, LLC

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Categories of documents sought from 2009 through present:

1. General Ledger in machine readable format (MS Excel)
2. Sub ledgers/books of entry in machine readable format (MS Excel)
3. Copy of Board's written conflict of interest policy
4. All documents relating to conflicts of interest, including but not limited to the use of the conflict of interest policy and correspondence between the board or managing agent and any and all vendors or prospective purchasers during the period from 2009 through present where policy was applicable or where conflicts of interest were discussed
5. Board meeting minutes reflecting discussions related to conflicts of interest
6. Documentation with respect to audited financials' potential lack of compliance with GAAP including, but not limited to ASC 850, FASB 972 and related accounting standards for 2009 through present
7. All documents reflecting correspondence concerning discrepancies between the July, 2015 updated disclosure to shareholders about related party disclosures and the board minutes relating to the discrepancy
8. All projections relating to cash requirements analysis performed by the board, its accounting firm, or managing agent in anticipation of mortgage refinancing
9. All documents reflecting actual use of proceeds of mortgage refinancing
10. All documents and projections relating to required reserves for the corporation
11. All documents related to financial planning for mortgage balloon payment due on or about 2022
12. All documents reflecting the fact that board member(s) recused themselves from any discussion and decisions relating to real estate transactions in which they held an interest, whether directly or indirectly, at 425 East 86<sup>th</sup> Street
13. All analyses performed relating to shareholder use of appurtenant outdoor space
14. All analysis performed related to C-line shareholders' use of vestibule areas outside the C-line entryway per the proprietary lease or other source
15. All analyses performed for the board relating to terrace rules promulgated between the years 2009 and present
16. Building engineer report or comments prepared in relation to any roof or terrace

issues including rules for the roof and terrace promulgated between the years 2009 and present

17. Copies of any and all inspection reports and inspection logs relating to the building
18. All RFPs submitted to Douglas Elliman and/or the board for capital improvements and non-ordinary course maintenance projects from 2009 through present
19. Bids submitted to Douglas Elliman and/or the board for capital improvement and non-ordinary course maintenance projects from 2009 through present
20. All approved scope of work for capital improvements and non-ordinary course maintenance performed in the building from 2009 through present
21. All documents related to justification for and approval sign-offs for any increase in project costs from original board-approved amounts (for capital improvement and non-ordinary course maintenance projects totaling \$50,000 or more from 2009 through present)
22. All documents related to shareholder complaints about capital improvement and non-ordinary course maintenance projects including damaging to their apartment(s) including leaks and water/moisture penetration. Shareholder complaints exclusively about new paint color of hallway and stairwell are excepted from this request
23. Documents related to project scope, name of contractor(s), list of payments made to vendors for all capital improvement and non-ordinary course maintenance projects from 2009 through present
24. All documents relating to renovations performed on the penthouse a chimney including meeting minutes and agreements with shareholders referable thereto
25. Any and all bank statements from 2009 through present
26. Corporate resolutions filed with all banking institutions in which the corporation holds accounts
27. Copies of all cancelled checks relating to capital improvements, renovation projects and non-ordinary course maintenance where the total project cost exceeded \$50,000, from 2009 through present

# BRAVERMAN | GREENSPUN

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March 23, 2016

*Via Email*

Stephanie Prince, Esq.  
Guzov, LLC  
805 Third Avenue, 8<sup>th</sup> Floor  
New York, New York 10022  
[sprince@guzovllc.com](mailto:sprince@guzovllc.com)

Re: Musey v. 425 East 86 Apartments Corp.,  
(N.Y. Sup. Ct., N.Y. Co. Index No. 150369-2016)

Dear Stephanie:

I am in receipt of the list you emailed over on Monday afternoon setting forth twenty-seven separate categories of documents that your client would like access to, going back to 2009. I have now had a chance to review same with my client.

As an initial matter, as your client did not become a shareholder until February 27, 2013, with the exception of materials concerning the contract between the Co-op and Standard Waterproofing (“Standard”), he will not be afforded any “look-back” prior to February 27, 2013.

Further, per the verified petition and other materials submitted to the Court in connection with Mr. Musey’s request for an order providing him access to unspecified “books and records,” the stated basis for the request is his concern about “potential” non-compliance with GAAP standards with regard to disclosing “related-party transactions.” Mr. Musey was specific that his primary concern in this regard is with respect to contracts entered into by the Co-op and Standard.

Secondary and tertiary bases for Mr. Musey’s application are stated to be the fact that he believes that Standard performed work to the roof area over his apartment and he, for unstated reasons, believes that the bulk of the alleged \$2,000,000.00 obtained by the Co-op in connection with a mortgage refinancing was used to pay for work performed by Standard.

Without conceding that there exists *any* foundation for any of the foregoing bases for relief asserted by Mr. Musey in his litigation papers, the list of twenty-seven categories of Co-op records goes well beyond addressing same and instead, is a transparent attempt to obtain

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{00465943;1}

discovery in the 2014 lawsuit (the “Main Action”) and to otherwise pursue a “fishing expedition” to harass and harangue the Co-op and its board members further; it does not appear that certain requests were made in good faith or for a proper purpose. In this regard, I am referring specifically to requests numbered 10-17, 22, 24, 25 and 26. Access to those requested materials is squarely denied. Each of the other requests will be addressed in turn.

With regard to request number 1, for the general ledger “in machine readable format” going back to 2009, the Co-op agrees to allow Mr. Musey to review the general ledger – with regard to expenses only – in its paper form, at the office of Douglas Elliman.<sup>1</sup> The ledgers will go back to March 1, 2013.

Request number 2 for subledgers is denied absent demonstration that there exists a legitimate basis for the request and that the request is made in good faith and in furtherance of the Co-op’s interests. In such event, Mr. Musey should also please clarify what sort of records are encompassed by the terms “sub ledgers” and “books of entry.”

With regard to requests 3 and 4, there is no written “conflict of interest policy.”

With regard to request number 5, for “Board meeting minutes reflecting discussions related to conflicts of interest,” in August 2015, Mr. Musey was given access to all Board meeting minutes going back to 1995. Accordingly, that request has already been satisfied.

Please provide more specificity as to what Mr. Musey is looking for in connection with request number 6. It is the Co-op’s position that there has been no “lack of compliance with GAAP” by it at any time.

With regard to request number 7, to the extent that materials exist reflecting correspondence between Douglas Elliman and Jeffrey Shavelson about the July 2015 updated disclosure to shareholders, same will be made available to Mr. Musey.

With regard to request number 8, Mr. Musey will be provided access to such materials, to the extent that they exist.

With regard to request number 9, the information sought is contained in the audited financials for 2012, 2013 and 2014 all of which Mr. Musey should already have. To the extent he does not have such audited financials, please advise and same will be provided.

With regard to request numbers 18-21 and 27, Mr. Musey will be provided access to any contract entered into between the Co-op and Standard, all RFPs for work ultimately performed by Standard, bids for work ultimately performed by Standard, scope of work performed by Standard, documents relating to increased costs in work performed by Standard and cancelled checks issued to Standard for work performed for the Co-op.

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<sup>1</sup> In order to protect shareholder privacy, those portions of the general ledger reflecting income will not be provided.

As to request number 23, please be more specific about what it is that Mr. Musey would like to see. I suspect that this is covered by request numbers 18-21 and 27. In any event, to the degree that Mr. Musey wishes to see materials that relate to work performed by any contractor other than Standard, same will not be provided.

For each category of documents that the Co-op agrees to provide access, the materials will be made available to Mr. Musey at the office of Douglas Elliman and upon appointment made at least 72 hours in advance, to allow sufficient time to gather all such materials. Moreover, no request for an appointment should be made until such time as the Article 78 proceeding has been resolved by the stipulation proposed by the Court and being negotiated now.

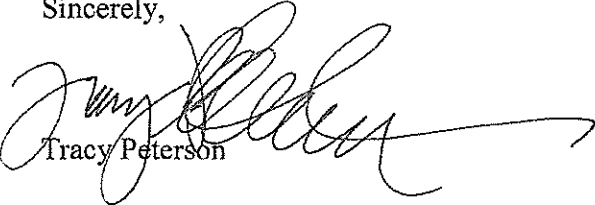
As to your advising that Mr. Musey reserves the right to modify his twenty-seven item list, including by adding additional categories, please be advised that in the event that we are able to resolve the Article 78 proceeding by stipulating to a list of specific materials to which Mr. Musey will be provided access, that list will be considered final.

In this same vein, we are not amenable to stipulating to the Court retaining jurisdiction over the Article 78 proceeding for the purpose of "the ultimate disposition of the matter." Any stipulation will resolve the proceeding.

Finally, when we spoke in Court last week, we also discussed settlement of all issues between our clients. In this regard, you advised that the main hurdle on Mr. Musey's end was the \$                    offered in early January 2016 (in addition to

I suggested to you that Mr. Musey come back to us with a different number that would be acceptable to him. We continue to await such number and continue in our hope that the parties can resolve their issues and move forward as neighbors.

Sincerely,



Tracy Peterson

cc: Board of Directors  
Kaswaree Narine  
Karel De Boer  
Herb Cohen, Esq.  
(via email)



March 25, 2016

**Via Email**

Tracy Peterson, Esq.  
Braverman Greenspun, P.C.  
110 East 42<sup>nd</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10017  
tracyp@braverlaw.net

**Re: *Musey v. 425 East 86 Apartments Corp.*  
Index No. 150369/2016**

Dear Tracy:

We are in receipt of your letter dated March 23, 2016 and respond herein.

While it is correct that my client was not a shareholder until February 27, 2013, when his purchase of the shares referable to Penthouse A closed, the transactions that he is concerned about, including conflicts of interest pertaining to the ongoing façade, roof and terrace construction work, as well as the mortgage, date back to well before February, 2013 but have a continuing impact on Mr. Musey's investment in the Co-op. As such, a relevant time period of 2009 through the present encompasses the relevant time-frame for all of the requested records.

Additionally, for some items, you state that hard copy will be available at Douglas Elliman and for others, you simply state that they will be made available or that you will provide access. To the extent that your client's records are kept electronically, hard copies are entirely too burdensome and we would ask that documents be made available in a format electronically readable in MS Excel.

As you know, paragraph 5 of the proprietary lease obligates your client to keep "full and correct books of account at its principal office or at such other place as the Directors may from time to time determine, and the same shall be open during all reasonable hours to inspection by the Lessee or a representative of the Lessee." The crux of the Article 78 proceeding is the Co-op's attempted nullification of this provision via Herb Cohen's December 11<sup>th</sup> letter to Mr. Musey. As such, we would like the stipulation to include a statement confirming this right and the Co-op's continuing obligation thereto. Mr. Musey's request to view the general ledger and sub-ledgers/books of entry encompasses a request to view the books of account. Should there be any confusion or question as to what exactly books of account refers to, we would suggest that a standard definition of books of account includes journals, ledgers, day-books, cash books, account-books and other records comprising an entity's set of accounts or record of debits and credits. Relatedly, Mr. Musey's right to view the Co-op Board's meeting minutes is not limited to one viewing and he would to review them a second time.



You have made certain representations in your letter of yesterday's date. To the extent that your client maintains no written conflict of interest policy, we would ask you to stipulate to that. Further, to the extent that you claim that it is the Co-op's position that there has been no lack of compliance with GAAP by it at any time, we would ask that the Co-op's auditor issue a letter verifying that 1) He has read and considered Mr. Musey's August 18<sup>th</sup> letter to Mr. Shavelson; and 2) the Co-op and specifically, its audited financial statements for 2011, 2012, 2013 and 2014 fully comply with GAAP including, but not limited to ASC 850 and FASB 972. Should the auditor provide such a letter, we will withdraw item 6 on our previous list.

In addition to the issues and categories of documents stated herein, the remainder of the outstanding issues are addressed in a revised list of categories, with explanation, which I attach as Exhibit A.

Finally, regarding your request for a counter-offer, based upon your January 20, 2016 conversation with Stuart Sugarman, it is our understanding that the Co-op was not willing to consider a number higher than \$ . Before we present a counter-offer, we would ask that you provide clarification as to whether your client's position on this has changed.

Sincerely,



Stephanie A. Prince, Esq.  
Guzov, LLC

Cc: Armand Musey

Revised categories of documents sought from 2009 through present:

- 1-6. Please see letter dated March 24, 2016.
7. All documents reflecting correspondence concerning discrepancies between the July, 2015 updated disclosure to shareholders about related party disclosures and the board minutes relating to the discrepancy.
8. All projections relating to cash requirements analysis performed by the board, its accounting firm, or managing agent in anticipation of mortgage refinancing.
9. All documents reflecting actual use of proceeds of mortgage refinancing. Mr. Musey is seeking an itemized list of expenditures pertaining to the mortgage refinancing proceeds. The audited annual financial statements do not provide such specificity.
11. All documents related to financial planning for mortgage balloon payment due on or about 2022. This item does not relate to the "Main Action," nor is it a part of a fishing expedition; rather, all information pertaining to the mortgage refinancing is relevant.
12. All documents reflecting the fact that board member(s) recused themselves from any discussion and decisions relating to real estate transactions in which they held an interest, whether directly or indirectly, at 425 East 86<sup>th</sup> Street. This item goes to the heart of the conflict of interest issue.
16. Building engineer report or comments prepared in relation to the Co-op's façade, roof and terrace construction project.
17. Copies of any and all inspection reports and inspection logs relating to the Co-op's façade, roof and terrace. This item goes to the issue of quality of the work that has been performed on the façade, roof and terrace.
- 18-21. Limited to the construction work ultimately performed during the façade, roof and terrace construction project: all RFPs and bids submitted, all approved scope of work, and all documents related to any increase in costs in the work ultimately performed. This goes to the heart of Mr. Musey's concerns regarding the façade, roof and terrace construction project.
22. All documents related to shareholder complaints about the work performed by Standard Waterproofing, including damaging to their apartment(s) including leaks

and water/moisture penetration. Shareholder complaints exclusively about new paint color of hallway and stairwell are excepted from this request. This item goes to the quality of the work performed and is relevant.

24. All documents relating to renovations performed on the Penthouse A chimney in or around 1999, including meeting minutes and agreements with shareholders referable thereto. This item does not relate to the “Main Action” and is also unique to Mr. Musey’s unit. To the extent this work, or agreements related to it, created undisclosed maintenance obligations, Mr. Musey has a right to know what they are.
26. Corporate resolutions filed with all banking institutions in which the corporation holds accounts. This item seeks standard documentation.
27. Copies of all cancelled checks issued to Standard Waterproofing and any other entity who performed work on the Co-op’s façade, roof and terrace construction project.
28. In addition to those RFPs submitted for work ultimately performed during the façade, roof and terrace construction project, all RFPs submitted to the Co-op or Co-op’s authorized representative for any capital improvement project from 2009 through the present.

# BRAVERMAN | GREENSPUN

A PROFESSIONAL CORPORATION

March 28, 2016

*Via Email*

Stephanie Prince, Esq.  
Guzov, LLC  
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New York, New York 10022  
[sprince@guzovllc.com](mailto:sprince@guzovllc.com)

Re: Musey v. 425 East 86 Apartments Corp.,  
(N.Y. Sup. Ct., N.Y. Co. Index No. 150369-2016)

Dear Stephanie:

I am in receipt of your March 25, 2016 letter. Thank you.

Overall, based upon the initial list of twenty-seven (27) separate categories of documents that Mr. Musey would like to inspect, as well as the March 25, 2016 letter, it appears that Mr. Musey is moving away from the sworn statements in support of his petition that his request for Co-op documents is borne out of a concern about “potential” non-compliance with GAAP standards with respect to contracts entered into by the Co-op and Standard. The current request for inspection is extremely far-reaching and goes well beyond documentation regarding the relationship between the Co-op and Standard.

That fact notwithstanding, the Co-op’s position regarding what documentation it is willing to allow Mr. Musey to inspect in order to resolve the Article 78 proceeding (as reflected in my March 23, 2016 letter) is expansive and generous.<sup>1</sup> For example, despite Mr. Musey’s having no affiliation with the Co-op prior to the end of February 2013, the Co-op is amenable to allowing him to inspect all requested materials regarding the contract between the Co-op and Standard, even those that pre-date Mr. Musey becoming a shareholder. By way of further example, the Co-op also is amenable to allowing Mr. Musey to inspect the general ledger (with regard to expenses only), going back to March 1, 2013. Certainly, the foregoing more than addresses Mr. Musey’s concerns, as set forth in his verified petition and affidavit in support thereof.

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<sup>1</sup> To the extent that there is any misunderstanding, all materials agreed-to will be made available, in hard copy, in the Douglas Elliman office at an agreed-upon date.

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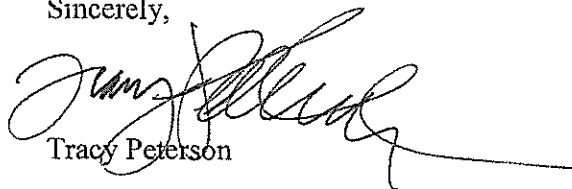
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The remainder of the demands, by and large, have no bearing whatsoever on the relationship between the Co-op and Standard. Please be reminded that this exercise is to reach a resolution of the Article 78 proceeding. It is not an opportunity for Mr. Musey to obtain discovery in the Main Action, nor is it an occasion for Mr. Musey to broaden the scope of materials he seeks in connection with the Article 78 proceeding.

If Mr. Musey is unwilling to resolve the Article 78 proceeding by accepting the Co-op's offer of inspection as outlined in my March 23, 2016 letter, I suggest we seek the assistance of the Court in reaching a final stipulation or that we ask the Court simply to decide the motion to dismiss.

Finally, so that there remains no further confusion with regard to resolution of all litigation between our clients, the Co-op would not be asking for a counter-demand from Mr. Musey if it was not amenable to considering same. Without revisiting, verbatim, the January 20, 2016 conversation between me and Stuart, since that time, we have been waiting for a counter-proposal from Mr. Musey. At no time has the Co-op taken its offer of early January 2016 off the table nor has it refused to consider any other proposal that may be forthcoming from Mr. Musey.

Sincerely,



Tracy Peterson

cc: Board of Directors  
Kaswaree Narine  
Karel De Boer  
Herb Cohen, Esq.  
(via email)



April 4, 2016

**Via Email**

Tracy Peterson, Esq.  
Braverman Greenspun, P.C.  
[tracyp@braverlaw.net](mailto:tracyp@braverlaw.net)

**Re: *Musey v. 425 East 86 Apartments Corp.*, Index No. 150369/2016**

Dear Tracy:

We are in receipt of your letter dated March 28, 2016 and respond insofar as it relates to the Article 78 matter. Our client cannot settle the Article 78 action until the Co-op's attempt to nullify shareholders' rights to access the Co-op's books of account, *via* Herb Cohen's December 11, 2015 letter is resolved. As you have been advised through our Court filings, Mr. Musey sought to examine the Co-op's books and records, including its books of account (pursuant to paragraph 5 of the proprietary lease) based upon his observations of corporate malfeasance, which compromise his investment in the Co-op.

While the relationship between the Co-op and Standard Waterproofing Corp is one of Mr. Musey's concerns, neither the Verified Petition nor the papers filed in opposition to your motion to dismiss limit his purpose to that one issue. Mr. Musey is simply seeking what he is entitled to as a shareholder, which is not limited to documents dated as of March 1, 2013 through the present. The Proprietary Lease does not limit a shareholder's right to view and examine books of account to only certain years, nor does it limit this right to only the expenses – which limitation defeats the purpose of allowing these examinations. Indeed, the Co-op certainly has waived its right to argue that Mr. Musey is not entitled to documents dating back to 2009 by virtue of the fact that it previously provided documents to Mr. Musey dating back to 1995. In this regard, some of the information Mr. Musey is seeking to review relates to information he was provided in December, 2012, which pertains to the Co-op's financials as far back as 2005, including the mortgage. Additionally, in June 2013, the Co-op provided Mr. Musey audited financials covering 2011 and 2012, when they were distributed to all shareholders. As the veracity of the information in these disclosures is now in question, the Co-op has no basis to deny inspection of the relevant underlying data. To the extent that you are denying Mr. Musey access to categories of documents that he is entitled to review as a shareholder and for which information was provided in his pre-purchase due diligence, or in the audited annual financial statements distributed in June, 2013, this refusal has no valid legal basis and can be construed as nothing more than obstructionist. The same can be said for the refusal to provide Mr. Musey access to information in an electronic format – among other issues, it makes a forensic evaluation extremely difficult. The documents are maintained in an electronic format and the Co-op has a duty to provide the documents in a readable electronic format.

We believe Mr. Musey is entitled to view documents pertaining to every item listed in our original letter dated March 21, 2016. However, in good faith and in the spirit of compromise, upon receipt of your March 23, 2016 letter, we edited and narrowed our list of categories of documents. At this juncture, we see no basis to narrow our list any further.

Should you be unwilling to work to resolve this matter without court intervention, we would be happy to contact the Court and schedule a conference with the Judge or his law clerk to resolve the stipulated list of categories. If we do not hear from you by Wednesday, April 6, 2016 COB, we will assume that the Co-op does not intend to work further to a resolution and we will contact the Court.

Finally, please be advised that the Co-op's 2015 annual audited financial statements are late.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Prince".

Stephanie A. Prince, Esq.  
Guzov, LLC

Cc: Armand Musey