

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

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J. ARMAND MUSEY,

Plaintiff,

Index No. 157316/2014

-against-

**ANSWER WITH
COUNTERCLAIM**

425 EAST 86 APARTMENTS CORP., DOUGLAS
ELLIMAN PROPERTY MANAGEMENT,
FRANK CHANEY, PATRICIA CARBON,
DAVID MUNVES, MICHAEL CONSIDINE,
SUZANNE KEANE a/k/a SUZANNE JULIG,
JENNIFER KRUEGER, GEORGE GREENBERG,
ALEXANDER SHAPIRO and LESLIE SPITALNICK,

Defendants.

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Defendants, 425 East 86 Apartments Corp. (the “Co-op”) Douglas Elliman Property Management (“DEPM”), Frank Chaney (“Chaney”), Patricia Carbon (“Carbon”), David Munves (“Munves”), Michael Considine (“Considine”), Suzanne Keane a/k/a Suzanne Julig (“Julig”), Jennifer Krueger (“Krueger”), Alexander Shapiro (“Shapiro”) and Leslie Spitalnick (“Spitalnick,” and collectively with the Co-op, DEPM, Chaney, Carbon, Munves, Considine, Julig, Krueger and Shapiro, the “Co-op Defendants”), by their attorneys, BRAVERMAN GREENSPUN, P.C., answering the plaintiff’s Complaint dated July 25, 2014 (the “Complaint”), upon information and belief, respectfully allege:

1. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 1 of the Complaint.
2. Deny the allegations set forth in paragraph 2 of the Complaint in the form alleged.
3. Deny the allegations set forth in paragraph 3 of the Complaint in the form alleged.
4. Admit the allegations set forth in paragraph 4 of the Complaint.
5. Deny the allegations set forth in paragraph 5 of the Complaint.
6. Admit the allegations set forth in paragraph 6 of the Complaint.

7. Admit the allegations set forth in paragraph 7 of the Complaint.
8. Deny the allegations set forth in paragraph 8 of the Complaint.
9. Deny the allegations set forth in paragraph 9 of the Complaint.
10. Admit the allegations set forth in paragraph 10 of the Complaint.
11. Deny the allegations set forth in paragraph 11 of the Complaint.
12. Deny the allegations set forth in paragraph 12 of the Complaint.
13. Deny the allegations set forth in paragraph 13 of the Complaint in the form alleged.
14. Deny the allegations set forth in paragraph 14 of the Complaint.
15. Deny the allegations set forth in paragraph 15 of the Complaint.
16. Deny the allegations set forth in paragraph 16 of the Complaint.
17. Deny the allegations set forth in paragraph 17 of the Complaint.
18. Deny the allegations set forth in paragraph 18 of the Complaint in the form alleged.
19. With respect to the allegations set forth in paragraph 19 of the Complaint, the Co-op Defendants respectfully refer the Court to the referenced Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.
20. With respect to the allegations set forth in paragraph 20 of the Complaint, the Co-op Defendants respectfully refer the Court to the Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.
21. With respect to the allegations set forth in paragraph 21 of the Complaint, the Co-op Defendants respectfully refer the Court to the Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.
22. Deny the allegations set forth in paragraph 22 of the Complaint in the form alleged.

23. Deny the allegations set forth in paragraph 23 of the Complaint.

24. With **respect** to the allegations set forth in paragraph 24 of the Complaint, the Co-op Defendants respectfully refer the Court to the referenced New House/Terrace Rules and deny the allegations to the extent that they are inconsistent therewith. The Co-op Defendants further aver that New House/Terrace Rules annexed to the Complaint are not the New House/Terrace Rules currently in effect.

25. Deny the allegations set forth in paragraph 25 of the Complaint in the form alleged.

26. Deny the allegations set forth in paragraph 26 of the Complaint.

27. Deny the allegations set forth in paragraph 27 of the Complaint in the form alleged.

28. Deny the allegations set forth in paragraph 28 of the Complaint.

29. Deny the allegations set forth in paragraph 29 of the Complaint.

30. Deny the allegations set forth in paragraph 30 of the Complaint.

31. Deny the allegations set forth in paragraph 31 of the Complaint.

32. Deny the allegations set forth in paragraph 32 of the Complaint

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION
FOR BREACH OF FIDUCIARY DUTY**

33. The Co-op Defendants repeat and reallege each and every response contained in paragraphs “1” through “32” above, as if recited herein in their entirety.

34. Deny the allegations set forth in paragraph 34 of the Complaint.

35. With respect to the allegations set forth in paragraph 35 of the Complaint, the Co-op Defendants respectfully refer all questions of the law to the Court for determination.

36. Deny the allegations set forth in paragraph 36 of the Complaint.

37. Deny the allegations set forth in paragraph 37 of the Complaint.

38. With respect to the allegations set forth in paragraph 38 of the Complaint, the Co-op respectfully refers the Court to the Co-op's Bylaws and denies the allegations to the extent that they are inconsistent therewith and further refers all questions of law to the Court for determination.

39. Deny the allegations set forth in paragraph 39 of the Complaint.

40. Deny the allegations set forth in paragraph 40 of the Complaint.

41. Deny the allegations set forth in paragraph 41 of the Complaint.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION FOR FRAUD

42. The Co-op Defendants repeat and reallege each and every response contained in paragraphs "1" through "41" above, as if recited herein in their entirety.

43. Deny the allegations set forth in paragraph 43 of the Complaint.

44. Deny the allegations set forth in paragraph 44 of the Complaint.

45. Deny the allegations set forth in paragraph 45 of the Complaint.

46. Deny the allegations set forth in paragraph 46 of the Complaint.

47. Deny the allegations set forth in paragraph 47 of the Complaint.

48. Deny the allegations set forth in paragraph 48 of the Complaint.

49. Deny the allegations set forth in paragraph 49 of the Complaint.

50. Deny the allegations set forth in paragraph 50 of the Complaint.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION
FOR DECLARATORY RELIEF**

51. The Co-op Defendants repeat and reallege each and every response contained in paragraphs "1" through "50" above, as if recited herein in their entirety.

52. With respect to the allegations set forth in paragraph 52 of the Complaint, the Co-op Defendants respectfully refer the Court to paragraph 6 of the Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.

53. Deny the allegations set forth in paragraph 53 of the Complaint.

54. Deny the allegations set forth in paragraph 54 of the Complaint.

55. With respect to the allegations set forth in paragraph 55 of the Complaint, the Co-op Defendants respectfully refer the Court to the Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.

56. Deny the allegations set forth in paragraph 56 of the Complaint.

57. With respect to the allegations set forth in paragraph 57 of the Complaint, the Co-op Defendants respectfully refer the Court to the Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.

58. With respect to the allegations set forth in paragraph 58 of the Complaint, the Co-op Defendants respectfully refer the Court to paragraph 21(a) of the Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.

59. Deny the allegations set forth in paragraph 59 of the Complaint.

60. Deny the allegations set forth in paragraph 60 of the Complaint.

61. Deny the allegations set forth in paragraph 61 of the Complaint.

62. With respect to the allegations set forth in paragraph 62 of the Complaint, the Co-op Defendants respectfully refer the Court to the Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.

63. Deny the allegations set forth in paragraph 63 of the Complaint.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION
FOR BREACH OF CONTRACT**

64. The Co-op Defendants repeat and reallege each and every response contained in paragraphs “1” through “63” above, as if recited herein in their entirety.

65. Admit the allegations set forth in paragraph 65 of the Complaint.

66. Deny the allegations set forth in paragraph 66 of the Complaint in the form alleged.

67. With respect to the allegations set forth in paragraph 67 of the Complaint, the Co-op Defendants respectfully refer the Court to the Proprietary Lease and deny the allegations to the extent that they are inconsistent therewith.

68. Deny the allegations set forth in paragraph 68 of the Complaint.

69. Deny the allegations set forth in paragraph 69 of the Complaint.

70. Deny the allegations set forth in paragraph 70 of the Complaint.

71. Deny the allegations set forth in paragraph 71 of the Complaint.

72. Deny the allegations set forth in paragraph 72 of the Complaint.

73. The allegations set forth in the “Wherefore” clause constitute Plaintiff’s prayer for relief to which no response is required. To the extent that a response is necessary, the Co-op Defendants deny that Plaintiff is entitled to the relief requested, or to any relief.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

74. Plaintiff’s claims are barred, in whole or in part, by documentary evidence.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

75. Plaintiff has failed to state a claim upon which relief may be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

76. Plaintiff’s claims are barred by the applicable statute of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

77. Plaintiff’s claims for equitable relief are defeated by their having an adequate remedy available at law.

**AS AND FOR A FIRST COUNTERCLAIM
(Attorney's Fees)**

78. On or about February 27, 2013, Plaintiff, as Lessee, and the Co-op, and Lessor, entered into a proprietary lease (the "Lease").

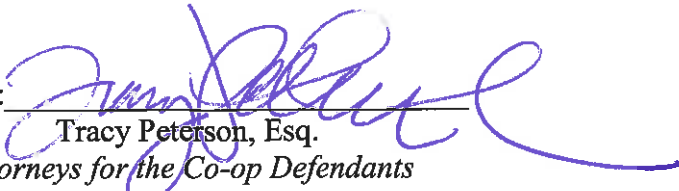
79. Paragraph 28 of the Lease allows the Co-op to be reimbursed for expenses, including reasonable attorney's fees, incurred in defending against an action or proceeding brought by a Lessee.

80. As the Co-op is incurring expenses, including attorney's fees, in the defense of this action, it seeks reimbursement therefor in an amount to be determined at trial, but in any event no less than \$50,000.00.

WHEREFORE, the Co-op Defendants demand judgment: (a) dismissing the Complaint, (b) on its first counterclaim, in an amount to be determined at trial, but no event less than \$50,000.00, and (c) granting such other, further and different relief as the Court may deem just, proper and equitable.

Dated: New York, New York
September 19, 2014

BRAVERMAN GREENSPUN, P.C.

By: 
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