

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 his shares, referable to apartment PHA at the Building on December 13, 2012. This purchase closed on February 27, 2013.
4. Petitioner seeks to protect his investment in Respondent.
5. Upon review of Respondent’s 2014 financial statements, Petitioner, a chartered financial analyst (“CFA”), noticed certain accounting discrepancies. Petitioner then reviewed previous years’ financial statements and found corresponding accounting discrepancies.
6. These accounting discrepancies include potential noncompliance with certain Generally Accepted Accounting Practices (“GAAP”), including but not limited to, Financial

Accounting Standards Board, Accounting Standards Codification (“FASB ASC”) 850, which provides disclosure requirements for related party transactions. Specifically, Petitioner’s concerns regarding to FASB ASC 850 relate to certain contracts Respondent entered into with Standard Waterproofing Corp. which constitute related party transactions.

7. Petitioner contacted Respondent’s accountant and notified him of these discrepancies. Upon information and belief, while the accountant prepared amended financial statements in only one of the affected years, Petitioner found that the amended financial statements also contained material inconsistencies with the official minutes from Respondent’s board of directors’ meetings. None of Petitioner’s attempts to communicate with Respondent’s accountant has elicited any clarification. Affirmation of Stephanie A. Prince (“Prince Aff.”), ¶¶ 2-5, Ex. 1-3.

8. Further, Respondent has failed and refused to provide financial statements within three months after the end of each fiscal year required by Article IV, Section 3 of Respondent’s bylaws.

9. Petitioner had concerns regarding errors in Respondent’s financials, their lateness and Respondent’s and its agents’ lack of diligence in resolving these errors, and the possible impact on shareholders. Consequently, Petitioner contacted Respondent and demanded access to Respondent’s books of account *via* the managing agent for the Building, which was followed-up by a formal demand made to Respondent through counsel. Prince Aff., Ex. 4 and Ex. 6.

10. Counsel for Respondent responded to Petitioner, denying Petitioner’s request for access and denying that any shareholder of Respondent has rights to access such information. Prince Aff. Ex. 5. Counsel for Respondent has failed to respond to Petitioner’s formal demand made through counsel.

11. 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 and New York common law. In addition, paragraph 5 of Petitioner's Proprietary Lease provides shareholders of Respondent, including the Petitioner, an independent right to inspect all books of account.

12. Petitioner has no adequate remedy at law.

WHEREFORE, Petitioner respectfully requests that an Order be entered: (i) in accordance with New York Business Corporation Law Section 624 and New York common law, requiring Respondent to provide Petitioner with access to books and records; (ii) 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
January 14, 2016

GUZOV, LLC



By: _____
Debra J. Guzov
Stephanie A. Prince
805 Third Avenue, 8th Floor
New York, New York, 10022
(212) 371-8008
dguzov@guzovllc.com
sprince@guzovllc.com
Attorneys for Petitioner

VERIFICATION

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

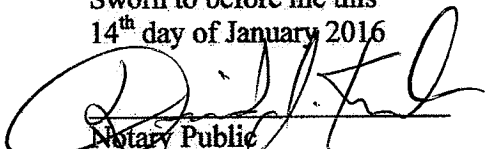
J. Armand Musey, being duly sworn, deposes and says that deponent is the Petitioner in the within action; that deponent has read the foregoing Petition and knows the contents thereof; that the same is true to deponent's own knowledge, except as to those matters stated to be alleged on information and 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
14th day of January 2016



Notary Public

DAVID J. KAPLAN
NOTARY PUBLIC, State of New York
No. 02KA6181875
Qualified in New York County
Commission Expires Feb. 11, 2016