

**Subject:** FW: follow up from our previous conversation - re Terrace Rules

**Date:** Thursday, September 19, 2013 5:00:21 PM Eastern Daylight Time

**From:** Chaney, Frank

**To:** 'amusey@me.com'

**CC:** 'margaretjanicek@gmail.com', 'Narine, Kaswaree', 'DeBoer, Karel', '425east86@gmail.com'

**Priority:** High

Armand,

The board reviewed your email, below, at Tuesday's board meeting and asked me to respond to you.

The board endorsed the offer made by David in his email, below, for he and I to meet with you to better understand your specific issues and concerns with regard to the terrace standards. That offer still stands; just let us know if and when you'd like to accept the offer and meet. We understand that you have a busy schedule, so we will await your response in due course. As an FYI, the next board meeting is scheduled for October 15.

While we are willing to discuss the terrace standards to explain the reasons for, clarify and/or make minor adjustments to address specific terms you believe prevent you from making use of the terrace, we do not at this time see any reason for a wholesale redraft of the standards. Especially not in the absence of any indication from you as to which specific standards you believe are problematic and how/why.

As to your evaluation that the standards are susceptible to challenge on the basis of "bad faith," "board overreach," "impracticality/impossibility" and "self-dealing" – we obviously disagree and deny these broad allegations. We also disagree and deny that "there are obvious conflicts with the proprietary lease" or that they represent a "back door rewrite of the proprietary lease." Yes, the proprietary lease provides that as the shareholder/owner of a penthouse apartment you "shall have and enjoy the exclusive use of... that portion of the roof appurtenant to the penthouse, subject to the applicable provisions of this lease and to the use of the... roof by the Lessor to the extent herein permitted." But the very next sentence provides that your use of the roof "shall be subject to such regulations as may, from time to time, be prescribed by the Directors."

As I'm sure you know and understand, while you have exclusive use of the roof adjacent to your penthouse, you don't own it; it is the commonly held property of all the shareholders and as such, the board, acting on behalf of all the shareholders, has the right to regulate its use in the same way that it has the right to regulate the use of other commonly held spaces throughout the building. The question is not whether they *could* be challenged. Anyone can sue anyone for anything at any time. Rather, the relevant question is whether they can be *successfully* challenged. As an attorney who appears to be familiar with corporations law, you must know that under New York's well-established business judgment rule, co-op boards are accorded substantial deference by the courts.

The standards that the board adopted are not unusual or out of the ordinary; they are modeled on and closely follow standards established and used by a number of other co-ops, whose buildings are of a similar age, size and construction as our building. They were carefully considered and prepared in consultation with the co-op's managing agent (who is also the managing agent of certain of the co-ops whose terrace standards served as a model for ours) and building engineer, and were vetted by the

co-op's attorneys.

Based on our review of the roof terrace plans submitted by your architect, the only thing shown on those plans that is not permitted by these standards is the three pergolas. And – for reasons we would be happy to explain – those would not have been approved even in the absence of the standards. We understand that you object to certain of the standards for planters and yet your plans do not show any planters. The standards certainly don't deny you exclusive use of the roof, as provided in the proprietary lease. They also don't deny you use of the roof; they allow you to have decking, furniture, planters, awnings and an outdoor grill. Therefore, we don't quite understand the vehement tone of your objections; it seems disproportionate to the actual effect of the standards on your plans.

We hope that you will accept our offer to work cooperatively toward a solution that will allow you and your family to make reasonable, enjoyable use of the roof adjacent to your unit while also protecting the interests of the other 75 or so shareholders. We would hate to see this escalate further than it already has.

Frank



Frank E. Chaney, Esq.

Bryan Cave LLP | 1290 Avenue of the Americas | New York, NY 10104

Voice: (212) 541-3077 | Fax: (212) 541-1377 | E-mail: frank.chaney@bryancave.com

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**From:** J. Armand Musey, CFA [<mailto:amusey@me.com>]

**Sent:** Saturday, September 14, 2013 9:26 AM

**To:** Munves, David

**Cc:** [Frank.Chaney@bryancave.com](mailto:Frank.Chaney@bryancave.com); DeBoer, Karel; [425east86@gmail.com](mailto:425east86@gmail.com); [prc@corcoran.com](mailto:prc@corcoran.com); Margaret Janicek; George Greenberg

**Subject:** Re: follow up from our previous conversation - re Terrace Rules

David,

Thanks for the follow-up. The new Terrace Rules document is quite comprehensive! We embrace the board's interest in protecting the building and personal safety, and we appreciate all of the time and thought the board put into it. Unfortunately, as you probably know, the rules are highly problematic.

I am swamped with work and traveling this week so I don't want to spend a lot of time going into a detailed breakdown of the document. But, among other issues, our evaluation shows that the rules, combined with the relevant timeline, expose the document to challenges on the basis of bad faith with respect to our purchase and approval process, board overreach, impracticality/impossibility and self-dealing. There are also obvious conflicts with our proprietary lease. With Frank's background as an experienced real estate attorney, and a sophisticated board advised by Douglas Elliman, you shouldn't have any trouble spotting these problems.

I am sure these issues were unintentional. But just to be clear, we are not interested in a back door rewrite of the proprietary lease we just signed. We were startled that the board would seek to require us to do so.

Please redraft and revert. I am willing to let bygones be bygones and try to pretend I never read it. Let discuss in Oct or Nov when the board has had a chance to regroup.

Best,

Armand

PS – I would have cc'd the whole board, but I don't have everyone's e-mail address.

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J. Armand Musey, CFA JD/MBA  
[Amusey@alumni.uchicago.edu](mailto:Amusey@alumni.uchicago.edu)  
917-514-2132

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**From:** "Munves, David" <[David.Munves@moodys.com](mailto:David.Munves@moodys.com)>  
**Date:** Wednesday, September 11, 2013 2:07 PM  
**To:** "J. Armand Musey" <[amusey@me.com](mailto:amusey@me.com)>, "margaretjanicek@gmail.com" <[margaretjanicek@gmail.com](mailto:margaretjanicek@gmail.com)>  
**Cc:** "[Frank.Chaney@bryancave.com](mailto:Frank.Chaney@bryancave.com)" <[Frank.Chaney@bryancave.com](mailto:Frank.Chaney@bryancave.com)>  
**Subject:** follow up from our previous conversation

Armand, Margaret,

I'm writing to follow up from our conversation of a few weeks ago. At the time you expressed disappointment in the corporation's rules governing the use of your terrace. Frank Chaney and I are available to meet and discuss your specific concerns in this regard, if you think it would be helpful to do so. I am hopeful that once we better understand your points of view we will be able to find a way to resolve the issues in a mutually satisfactory way.

Frank and I are around for the next week, so if you would like to meet, please suggest some dates and times that would be convenient for you. I am sure you would like to resolve these matters as quickly as possible. Our next board meeting is on Tuesday, Sept. 17<sup>th</sup>. If we could meet before that date, Frank and I could then to discuss what we learn with the full board. At the same meeting the board could possibly modify or clarify the terrace rules, as we deem appropriate.

Look forward to hearing from you.

Regards,

David

**David W. Munves, CFA**  
Divisional Managing Director  
Capital Markets Research Group  
Phone: 1 212 553-2844  
Cellphone: 1 917 319-2642  
Fax: 1 212 298-6921

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