

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. GERALD LEBOVITS

PRESENT: _____ J.S.C.
Justice

PART 7

J. Armand Musey

INDEX NO. 150369/16

425 East 86 Apartments Corp.

MOTION DATE _____

MOTION SEQ. NO. 01

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

decided according to the attached decision/order dated 4/13/16.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
APR 18 2016
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/13/16.

GL J.S.C.

HON. GERALD LEBOVITS

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 7**

In the Matter of the Application of
J. ARMAND MUSEY,

Petitioner,

Index No.: 150369/2016
DECISION/ORDER
Motion Seq. 1 and 2

-against-

425 EAST 86 APARTMENTS CORP.,

Respondent.

Recitation, as required by CPLR 2219 (a), of the papers considered in reviewing the petition and respondent's cross-motion to dismiss.

Papers	Numbered
Verified Petition.....	1
Notice of Motion	2
Amended Notice of Motion	3
Respondent's Memorandum of Law.....	4
Respondent's Amended Memorandums of Law.....	5
Petitioner's Memorandum of Law in Opposition	6
Respondent's Reply Memorandum of Law	7

Guzov, LLC (Debra J. Guzov and Stephanie A. Prince of counsel), for petitioner.
Braverman Greenspun P.C. (Tracy Peterson of counsel), for respondent.

Gerald Lebovits, J.

Upon the foregoing papers, the court's order dated February 29, 2016, issued in this proceeding on motion sequence 1 granting the petition as unopposed, is withdrawn because respondents separately but timely filed a motion to dismiss on February 2, 2016, in motion sequence 2. Respondent's motion to dismiss is therefore considered a cross-motion to dismiss the petition. The court consolidates motion sequences 1 and 2 for disposition.

Respondent is a corporation that owns real property located at 425 East 86th Street. Petitioner is a shareholder in respondent corporation. Petitioner brought this proceeding under CPLR 7803 (1) seeking enforcement of his right to access respondent's books of accounts under BCL § 624. Petitioner also seeks costs and counsel fees.

After reviewing respondent's financial statements, petitioner noted alleged accounting discrepancies and requested access to respondent's books of accounts. Respondent allegedly denied petitioner's request.

Petitioner's claim is premature because respondent has not rejected petitioner's request. A shareholder has the right to examine the corporation's minutes of the proceedings of its shareholders and record of shareholders. (BCL § 624 [b].) Upon a shareholder's written request, the corporation must provide its annual balance sheet and profit and loss statement for the preceding fiscal year and the most recent interim balance sheet or profit and loss statement, if any. (BCL § 624 [e].) Only after the corporation rejects a shareholder's request may the shareholder seek relief from the court. (BCL § 624 [d].)

The court is not persuaded that respondent rejected petitioner's request. After receiving petitioner's request to access the books of accounts, respondent asked petitioner whether petitioner wanted to see any specific documents. (Aff. of Narine at ¶ 5.) In petitioner's follow-up letter, petitioner did not answer respondent's question and merely renewed his earlier request to access respondent's books of accounts. (Aff. of Sugarman, Exhibit 1; Aff. of Narine at ¶ 6.) None of the exhibits show that petitioner ever requested specific documents other than general books of accounts.

Although respondent told petitioner that it will provide only the documents listed in BCL § 624 (b) and (e), this does not constitute a rejection. A shareholder's common-law right of inspection is broader than the specific materials delineated in BCL § 624 (b) and (e) (*see Retirement Plan for Gen. Employees of the City of N. Miami Beach v. The McGraw-Hill Cos., Inc.* 120 AD3d 1052, 1056 [1st Dept 2014]), but a corporation's obligation to disclose does not expand beyond the materials specified in the BCL when a shareholder makes a general request and does not identify specific materials. Respondent further states that it is ready to grant access to the documents specified in BCL upon petitioner's request. (Respondent's Reply Memorandum, at 4.) Because respondent has yet to reject petitioner's request, petitioner's claim is premature.

ORDERED and ADJUDGED that respondent's cross-motion to dismiss (motion sequence 2) is granted and the petition is denied (motion sequence 1), and it is further

ORDERED and ADJUDGED that the petition is dismissed without prejudice, in accordance with this opinion.

Counsel for respondent is directed to serve a copy of this order with notice of entry upon the Clerk of the Court, who is directed to enter judgment accordingly.

This opinion is the court's decision and order.

Dated: April 13, 2016

FILED
APR 18 2016
COUNTY CLERK'S OFFICE
NEW YORK

J.S.C.
HON. GERALD LEBOVITS
J.S.C.

Milton A. Pugliese
Clerk

2

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

Index No. 150369/2016

J. Armand Mussey

Plaintiff,

-against-

425 East 86 Apartments Corp

Defendants.

Judgment

Guzov, LLC
805 Third Ave, FL8
New York, NY 10022
212-371-8008

FILED
APR 18 2016
3:50 P
M
AT
N.Y. CO. CLERKS OFFICE