

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

----- X
ALF NAMAN REAL ESTATE ADVISORS, LLC,

Petitioner,

-against-

CAPSAG HARBOR MANAGEMENT, LLC,

Respondent.
----- X

Index No.: 12100868

NOTICE OF PETITION

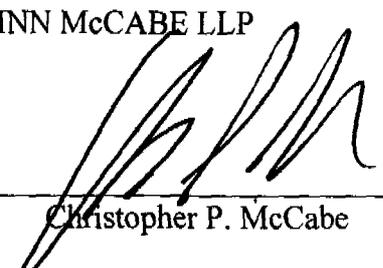
PLEASE TAKE NOTICE that, upon the annexed Verified Petition, dated January 26, 2012, and pursuant to Section 1005(b) of the New York Limited Liability Company Law, Petitioner Alf Naman Real Estate Advisors, LLC ("Petitioner"), by and through its attorneys, Quinn McCabe LLP, shall petition this Court at the Courthouse located at 60 Centre Street, New York, New York 10007 on the 16th day of February, 2012, in the Motion Support Room 130, at 9:30 a.m. or as soon thereafter as counsel may be heard, for an appraisal and determination of the fair value of Petitioner's membership interest in Capnam Sag Management, LLC (the "Company"), and an order: (i) directing Respondent Capsag Harbor Management, LLC to pay Petitioner the fair value of Petitioner's membership interest in the Company, plus interest at the statutory rate; (ii) awarding Petitioner its costs and expenses, including attorney's fees, incurred in connection with this matter pursuant to Section 623(h)(7) of the New York Business Corporation Law; and; (iii) granting such other and further relief as the Court deems just and proper.

FILED
JAN 26 2012
COUNTY CLERK'S OFFICE
NEW YORK

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 403(b), service of this Notice of Petition having been made more than twelve (12) days prior to the return date hereof, service of an Answer and supporting affidavits, if any, shall be made by February 9, 2012, seven (7) days prior to the return date hereof.

Dated: New York, New York
January 26, 2012

QUINN McCABE LLP

By: 

Christopher P. McCabe

274 Madison Avenue, Penthouse
New York, New York 11016
Telephone: (212) 447-5500

Attorneys for Petitioner

TO:

CAPSAG HARBOR MANAGEMENT, LLC
c/o Cape Advisors, Inc.
483 Broadway, 5th Floor
New York, New York 10013

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

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ALF NAMAN REAL ESTATE ADVISORS, LLC,

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Index No.:

VERIFIED PETITION

Petitioner Alf Naman Real Estate Advisors, LLC (“Petitioner”), by and through its attorneys, Quinn McCabe LLP, alleges as follows:

Nature of the Proceeding

1. This is a special proceeding to determine the rights of Petitioner with respect to Petitioner’s membership interest in Capnam Sag Management, LLC (the “Company”), and to fix the fair value of Petitioner’s membership interest in the Company pursuant to Section 1005(b) of the New York Limited Liability Company Law.

2. Petitioner is separately filing an action against Respondent and Cape Sag (defined below) primarily seeking declaratory and injunctive relief to unwind/rescind all transactions effecting the merger of Respondent, with and into the Company, with Respondent being the surviving company in the merger, as the actions of Respondent and Cape Sag in effecting the merger were unlawful as to Petitioner.

Parties

3. At all times material herein, Petitioner Alf Naman Real Estate Advisors, LLC was and is a limited liability company organized and existing pursuant to the laws of the State of New York with its principal place of business located at 551 West 21st Street, Suite 306A, New York, New York 10011.

4. At all times material herein, upon information and belief, Respondent Capsag Harbor Management, LLC was and is a limited liability company organized and existing pursuant to the laws of the State of New York with its principal place of business located c/o Cape Advisors, Inc., at 483 Broadway, 5th Floor, New York, New York 10013.

Factual Background

5. At all times material herein, Petitioner and Cape Sag Developers, LLC ("Cape Sag") were the two members of the Company. Cape Sag was the managing member of the Company.

6. Upon information and belief, prior to the purported effective date of the Merger (as defined below), the Company was the managing member of Cape Sag Group, LLC, a limited liability company organized and existing pursuant to the laws of the State of New York.

7. Upon information and belief, prior to the purported effective date of the Merger (as defined below), Cape Sag Group, LLC was the sole member of Sag Development Partners, LLC, a limited liability company organized and existing pursuant to the laws of the State of New York. Sag Development Partners, LLC is the owner of the real property located at 15 Church Street, Sag Harbor, New York (the "Property").

8. Upon information and belief, the Company, Cape Sag Group, LLC, and Sag Development Partners, LLC were created in connection with the acquisition and development of the Property (the "Project").

**The Merger and The Parties' Failure to Agree on the
Fair Value of Petitioner's Membership Interest in the Company**

9. In 2011, Cape Sag, on behalf of the Company, provided Petitioner a "Notice of Action in Lieu of Meeting / Notice of Merger / Notice of Dissenter's Rights" (the "Merger Notice"), which stated, among other things, that Cape Sag adopted certain resolutions by written consent in lieu of a meeting, whereby it approved the merger of Respondent Capsag Harbor Management, LLC, identified as an affiliate of the Company, with and into the Company, with Respondent Capsag Harbor Management, LLC being the surviving company in the merger (the "Merger").

10. The Merger Notice further stated that Respondent Capsag Harbor Management, LLC has determined that the fair market value of the Company is One Thousand Dollars (\$1,000.00), and that the fair market value of Petitioner's membership interest in the Company is Four Hundred Sixty Five Dollars and Sixty Cents (\$465.50). At the time Petitioner received the Merger Notice, Petitioner was the owner of a 46.56% membership interest in the Company.

11. In response to the Merger Notice, Petitioner timely filed with the Company a written "Notice of Dissent" from the proposed merger (the "Notice of Dissent").

12. Following the Notice of Dissent, Respondent Capsag Harbor Management, LLC provided Petitioner with an "Offer of Fair Market Value of Membership Interests" (the "Offer"). The Offer stated that the Merger became effective

as of July 18, 2011, and offered Petitioner Four Hundred Sixty Five Dollars and Sixty Cents (\$465.50), purportedly representing the fair market value of Petitioner's 46.56% membership interest in the Company.

13. In response to the Offer, Petitioner timely filed with Respondent Capsag Harbor Management, LLC a "Rejection of Offer," stating that the fair market value of the Company, and therefore the fair market value of Petitioner's membership interest in the Company, significantly exceeds the amount set forth in the Offer.

14. Because Petitioner and Respondent Capsag Harbor Management, LLC have been unable to agree on the price to be paid for Petitioner's membership interest in the Company, and because the Company failed to institute a special proceeding to determine Petitioner's rights, Petitioner was forced to institute this proceeding to determine its rights as a dissenting member and to fix the fair value of its membership interest in the Company.

The Fair Value of Petitioner's Membership Interest in the Company
Materially Exceeds The Amount of the Offer

15. Pursuant to the terms of the Operating Agreements of Cape Sag Group, LLC and of its managing member, the Company, Cape Sag Group, LLC is obligated to pay significant fees to the Company in connection with the Project.

16. Specifically, the Operating Agreement of Cape Sag Group, LLC calls for the payment by Cape Sag Group, LLC to the Company of, among other payments, a developer's fee in connection with the Project, a property management fee, a market rate leasing commission with respect to commercial leases entered into at the Property, a financing fee with respect to a refinancing of the Property, and a project management fee.

17. Consistent with the foregoing terms of the Operating Agreement of Cape Sag Group, LLC, the Amended and Restated Operating Agreement of the Company contemplates the Company's receipt of the fees from Cape Sag Group, LLC as set forth above, and provides for an allocation of those fees between the members of the Company, with Petitioner receiving forty eight percent (48%) and Cape Sag receiving fifty two percent (52%).

18. In fact, upon information and belief, Cape Sag Group, LLC, or an affiliate, is planning to pay over \$1.6 million in "Developer Fees" to an unidentified affiliate of Cape Sag Group, LLC at some point during or after the construction of the Project.

19. As a result of the Company's rights to receive the fees from Cape Sag Group, LLC as set forth above, among other rights, the fair market value of the Company materially exceeded One Thousand Dollars (\$1,000.00), the amount that Respondent Capsag Harbor Management, LLC determined as the value of the Company.

20. Similarly, as a result of Petitioner's right to share in the fees from Cape Sag Group, LLC as set forth above, the fair market value of Petitioner's membership interest in the Company materially exceeded Four Hundred Sixty Five Dollars and Sixty Cents (\$465.50), the amount that Respondent Capsag Harbor Management, LLC determined as the fair market value of Petitioner's 46.56% membership interest in the Company and offered to pay Petitioner.

21. At all times material herein, Respondent Capsag Harbor Management, LLC is and was aware that the fair market value of Petitioner's membership interest in the Company materially exceeded the amount of the Offer.

**FIRST CAUSE OF ACTION
(Determination of Fair Value)**

22. Petitioner repeats and realleges the allegations set forth above as if fully set forth herein.

23. As a result of the Merger, Petitioner's dissent to the Merger, and Petitioner's rejection of the Offer, which amount is materially lower than the actual fair value of Petitioner's membership interest in the Company, Petitioner is entitled to receive the fair value of its 46.56% membership interest in the Company, which should include, among other things, its portion of the value of the fees the Company was to receive from Cape Sag Group, LLC as set forth above.

24. The Court should appraise and determine the fair value of Petitioner's membership interest in the Company and order Respondent Capsag Harbor Management, LLC to pay that amount to Petitioner, plus interest at the statutory rate.

**SECOND CAUSE OF ACTION
(Payment of Attorney's Fees and Costs)**

25. Petitioner repeats and realleges the allegations set forth above as if fully set forth herein.

26. Section 623(h)(7) of the New York Business Corporation Law, which applies herein pursuant to Section 1005(b) of the New York Limited Liability Company Law, provides that the Court may assess the costs, expenses and fees incurred by a dissenting shareholder if the Court finds any of the following: "(A) that the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay; [or] (D) that the action of the corporation in complying with its obligations as provided in this section was arbitrary, vexatious, or otherwise not in good faith."

27. The fair market value of Petitioner's membership interest in the Company materially exceeded the amount of the Offer.

28. At all times material herein, Respondent Capsag Harbor Management, LLC is and was aware that the fair market value of Petitioner's membership interest in the Company materially exceeded the amount of the Offer. In presenting the Offer to Petitioner, Respondent Capsag Harbor Management, LLC did not comply with its legal obligations as provided in Section 623(h) of the New York Business Corporation Law in good faith.

29. The Court should award Petitioner its costs and expenses, including attorney's fees, incurred in connection with this matter pursuant to Section 623(h)(7) of the New York Business Corporation Law.

WHEREFORE, by reason of the foregoing, Petitioner respectfully requests that the Court:

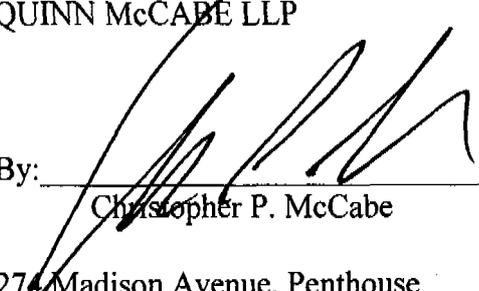
(i) Appraise and determine the fair value of Petitioner's membership interest in the Company and order Respondent Capsag Harbor Management, LLC to pay that amount to Petitioner, plus interest at the statutory rate;

(ii) Award Petitioner its costs and expenses, including attorney's fees, incurred in connection with this matter pursuant to Section 623(h)(7) of the New York Business Corporation Law; and

(iii) Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 26, 2012

QUINN McCABE LLP

By: 

Christopher P. McCabe

270 Madison Avenue, Penthouse
New York, New York 11016
Telephone: (212) 447-5500

Attorneys for Petitioner

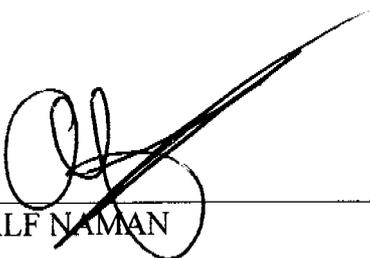
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ALF NAMAN, being duly sworn, deposes and says:

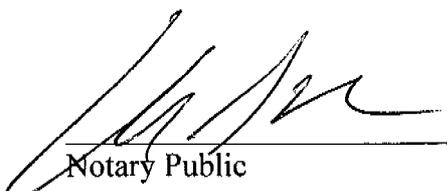
1. I am a member of the Petitioner herein, a limited liability company organized pursuant to the laws of the State of New York and authorized to do business in the State of New York.

2. I have reviewed the foregoing Verified Petition and know the contents thereof; the same is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



ALF NAMAN

Sworn to before me this
26th day of January 2012



Notary Public

CHRISTOPHER P. McCABE
Notary Public, State of New York
No. 02MC6222713
Qualified in Westchester County
Commission Expires June 1, 2014

SUPREME COURT
STATE OF NEW YORK, COUNTY OF NEW YORK

Index No.

Year

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NOTICE OF PETITION and PETITION

Quinn McCabe LLP

Attorney(s) for Petitioner,

ALF NAMAN REAL ESTATE ADVISORS, LLC
Office and Post Office Address, Telephone

274 Madison Avenue, Penthouse Suite

New York, NY 10016

(212) 447-5500

To

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated: _____

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order
will be presented for settlement to the HON.
within named Court, at

of which the within is a true copy
one of the judges of the

on _____ at _____ M.
Supreme Court Records OnLine Library - page 12 of 12

Dated.