

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

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ROBERT M. LEVINE, AS TRUSTEE OF THE :
MARION LEVINE REVOCABLE TRUST, :

Petitioner, :

-against- :

SEVEN PINES ASSOCIATES LIMITED :
PARTNERSHIP, :

Respondent. :
: :
----- X

Index No. 151958/2014

**ANSWER TO PETITION
TO FIX FAIR VALUE
OF DISSENTING
PARTNERSHIP INTEREST**

Respondent Seven Pines Associates Limited Partnership (“Seven Pines”), by its attorneys, Katten Muchin Rosenman LLP, as and for its answer (the “Answer”) to the Petition to Fix Fair Value of Dissenting Limited Partnership Interest dated March 4, 2014 (the “Petition”), filed by petitioner Robert M. Levine, as trustee of the Marion Levine Revocable Trust (the “Petitioner” or the “Levine Trust”), alleges as follows:

NATURE OF THE CASE¹

1. Admits the allegation contained in paragraph 1 of the Petition that this is a special proceeding under the New York Business Corporation Law to determine the rights of a dissenting limited partner after a merger, and otherwise denies any and all remaining allegations contained in said paragraph.

PARTIES

2. Denies the allegation contained in paragraph 2 of the Petition that the Levine Trust owned 4.165 percent of Seven Pines until January 8, 2014, admits the allegation that

¹ The section headings reproduced from the Petition are for organizational purposes only and do not reflect Seven Pines’ admission or denial of the contents thereof.

Petitioner was a limited partner in Seven Pines until January 8, 2014, and otherwise denies any remaining allegations contained in paragraph 2 of the Petition.

3. Admits the allegations contained in paragraph 3 of the Petition.

JURISDICTION AND VENUE

4. Admits the allegation in paragraph 4 of the Petition that Seven Pines is a New York limited partnership which conducts business in and owns property in this State, and does not respond to the remaining allegations in said paragraph because they set forth conclusions of law to which no response is required, and denies each and every remaining allegation contained in paragraph 4 of the Petition.

5. Admits the allegation in paragraph 5 of the Petition that this Court is located in the judicial district where the office of Seven Pines is located according to the records of the New York Secretary of State, and does not respond to the remaining allegations in said paragraph because they set forth conclusions of law to which no response is required.

6. Admits the allegation in paragraph 6 of the Petition that Seven Pines was formed in 1972, respectfully refers the Court to the Amended and Restated Partnership Agreement in 1973 (the "Amended Partnership Agreement") referenced therein for the contents thereof, and denies any remaining allegations contained in paragraph 6 of the Petition.

7. Denies the allegations contained in paragraph 7 of the Petition.

8. Admits the allegation in paragraph 8 of the Petition that the Partnership's sole asset is a 304 unit apartment building located in Yonkers, New York, and denies any and all remaining allegations contained in said paragraph.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Petition and respectfully refers the Court to the appraisal (Petition, at Exh. A) referenced therein for the contents thereof.

10. Admits the allegations contained in paragraph 10 of the Petition.

11. Denies the allegations contained in paragraph 11 of the Petition and respectfully refers the Court to the materials referenced therein for the contents thereof.

12. Denies the allegations contained in paragraph 12 of the Petition.

13. Denies the allegations contained in paragraph 13 of the Petition.

14. Admits the allegations contained in paragraph 14 of the Petition.

15. Denies the allegations contained in paragraph 15 of the Petition.

16. Admits the allegation contained in paragraph 16 of the Petition that Seven Pines provided Petitioner with documents in response to a request Seven Pines received for certain documents, respectfully refers the Court to the documents referenced therein for the contents thereof, and otherwise denies any and all remaining allegations in said paragraph.

17. Denies the allegations contained in paragraph 17 of the Petition.

18. Denies the allegations contained in paragraph 18 of the Petitioner and respectfully refers the Court to Exhibits C and D of the Petition for the contents thereof.

19. Denies the allegations contained in paragraph 19 of the Petition.

20. Admits the allegation in paragraph 20 of the Petition that Petitioner requested Seven Pines to provide it with documents and information after Petitioner's dissent to the merger, respectfully refers the Court to the documents referenced therein for the contents thereof, and denies any remaining allegations in said paragraph.

21. Denies the allegations contained in paragraph 21 of the Petition.

22. Denies the allegations contained in paragraph 22 of the Petition.

23. Admits that the merger referenced in paragraph 23 of the Petition was completed on January 8, 2014, respectfully refers the Court to the “Agreement and Plan of Merger” referenced therein for the contents thereof, and denies any and all remaining allegations in said paragraph.

24. Denies the allegations contained in paragraph 24 of the Petition.

25. Admits the allegation contained in paragraph 25 of the Petition that Seven Pines offered Petitioner \$325,000 as compensation for his interest in Seven Pines, respectfully refers the Court to the letter referenced therein for the contents thereof, and otherwise denies any and all remaining allegations in said paragraph.

26. Denies the allegations contained in paragraph 26 of the Petition.

27. Denies the allegations contained in paragraph 27 of the Petition.

28. Admits the allegation in paragraph 28 of the Petition that Petitioner informed Seven Pines that it planned to commence the instant special proceeding if no agreement was reached regarding the value of Petitioner’s interest in Seven Pines, and otherwise denies any and all remaining allegations in said paragraph.

29. Admits the allegation contained in paragraph 29 of the Petition that Seven Pines provided Petitioner with a copy of Seven Pines’ 2013 financial statements, respectfully refers the Court to the 2013 financial statements themselves for the contents thereof, and denies any and all remaining allegations in said paragraph.

30. Admits the allegation contained in paragraph 30 of the Complaint that Seven Pines provided Petitioner with a rent roll for the Property, respectfully refers the Court to the rent

roll referenced therein for the contents thereof, and otherwise denies any and all allegations in said paragraph.

31. Denies the allegations contained in paragraph 31 of the Petition.

AS AND FOR A FIRST CLAIM FOR RELIEF

(Action to Fix the Fair Value of the Levine Trust's Partnership Interest Pursuant to N.Y. Bus. Corp. Law § 623)

32. Seven Pines repeats and re-alleges its answers in paragraphs 1 through 31 of the Answer as if set forth fully herein.

33. Does not respond to the allegations in paragraph 33 of the Petition to the extent they set forth conclusions of law to which no response is required, and otherwise denies any and all allegations contained in said paragraph.

34. Admits the allegations contained in paragraph 34 of the Petition.

35. Does not respond to the allegations in paragraph 35 of the Petition to the extent they set forth conclusions of law to which no response is required, and otherwise denies any and all allegations contained in said paragraph.

36. Denies the allegations contained in paragraph 36 of the Petition.

37. Does not respond to the allegations in paragraph 37 of the Petition to the extent they set forth conclusions of law to which no response is required, and otherwise denies any and all allegations contained in said paragraph.

38. Denies the allegations contained in paragraph 38 of the Petition.

39. Denies the allegations contained in paragraph 39 of the Petition.

40. Denies the allegations contained in paragraph 40 of the Petition.

41. Denies the allegations contained in paragraph 41 of the Petition.

42. Denies the allegations contained in paragraph 42 of the Petition.

43. Denies the allegations contained in paragraph 43 of the Petition.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(Failure to State A Claim)

44. The Petition fails to plead facts sufficient to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Unclean Hands)

45. Petitioner is barred from the relief requested herein due to his own wrongful or inequitable conduct.

THIRD AFFIRMATIVE DEFENSE
(Wrong Valuation Date)

46. The relief requested in the Petition should be denied because the Petitioner requested compensation for the value of his one-half limited partnership interest in Seven Pines as of a date that does not conform with N.Y. B.C.L. § 623(h)(4).

FOURTH AFFIRMATIVE DEFENSE

**(The Fair Value Of The Petitioner's Half Limited Partnership Interest In Seven Pines
Should Be Fixed At \$324,611 Pursuant To N.Y. Business Corporation Law § 623)**

47. Pursuant to Section 10.2(C) of Seven Pines Associated Amended and Restated Agreement of Limited Partnership, the fair value of Petitioner's one-half limited partnership interest in Seven Pines is \$324,611.

ADDITIONAL AFFIRMATIVE DEFENSES RESERVED

48. Seven Pines hereby reserves the right to assert any additional affirmative defenses that become available or apparent during the pendency of this matter.

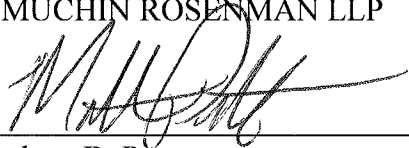
WHEREFORE, Seven Pines respectfully requests that the Court:

- (i) reject Petitioner's request to fix the value of his limited partnership interest in Seven Pines at \$1,573,000;
- (ii) deny Petitioner's request for attorney's fees, costs and expenses related to this proceeding;
- (iii) fix the value of Petitioner's half limited partnership interest in Seven Pines at \$324,611;
- (iv) award Seven Pines reasonable attorney's fees, costs and expenses related to this special proceeding pursuant to N.Y. Business Corporation Law §623(h)(7); and
- (v) grant Seven Pines such other and further relief as is just and proper.

Dated: New York, New York
April 18, 2014

KATTEN MUCHIN ROSENMAN LLP

By: _____


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*Attorneys for Respondent Seven Pines Associates
Limited Partnership*