

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

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

Petitioner,

-against-

SEVEN PINES ASSOCIATES LIMITED
PARTNERSHIP,

Respondent.

INDEX NO. _____

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

Petitioner Robert M. Levine, Trustee of the Marion Levine Revocable Trust, by and through his attorneys Berlandi Nussbaum & Reitzas LLP, for his Petition pursuant to the New York Revised Limited Partnership Act and the New York Business Corporation Law to fix the fair value of his partnership interest against Defendant alleges as follows:

NATURE OF THE CASE

1. This action arises out of Defendant Seven Pines Associates Limited Partnership's failure to adequately value the limited partner interests in connection with the merger of the Seven Pines Associates Limited Partnership with and into Seven Pines Holdings LLC, a Massachusetts limited liability company and its failure to comply with the New York Revised Limited Partnership Act (the "Partnership Act") and the New York Business Corporation Law (the "Corporation Law ") in determining the rights of a dissenting limited partner after a merger.

PARTIES

2. Petitioner, Robert M. Levine, is the Trustee of the Marion Levine Revocable Trust ("Levine Trust"). Mr. Levine has been acting trustee for the Levine Trust since January 2009. Until January 8, 2014, the Levine Trust was a limited partner in the Partnership, owning 4.165%.

3. Defendant, Seven Pines Associates Limited Partnership (the “Partnership”), is a limited partnership organized under the laws of the State of New York. The Partnership owns an apartment building located at 1 Glenwood Avenue, Yonkers, NY 10701. Its place of business in New York is located at 1325 Avenue of the Americas, 7th Floor, New York, NY 10019.

JURISDICTION AND VENUE

4. Jurisdiction over Defendant is proper because the Partnership is a New York limited partnership which conducts business in and owns property in this State.

5. Venue is proper pursuant to Section 623 of the Corporation Law because this Court is located in the judicial district where the office of the Partnership is located according to the records of the New York Secretary of State.

FACTUAL BACKGROUND

6. The Partnership was formed in 1972 and the partners entered into an Amended and Restated Partnership Agreement in January 1973 (“Amended Partnership Agreement”).

7. Each limited partnership unit in the Partnership is equal to a 8.33% ownership interest (“LP Unit”). The Levine Trust owned half of an LP Unit, equal to a 4.165% interest in the Partnership, from 1972 until January 8, 2014.

8. The Partnership’s sole asset is a 304 united apartment building located in Yonkers, New York (the “Property”). In August 2012, the General Partner for the Partnership commissioned an appraisal of the Property by Withers Engelke & Associates (the “appraiser”).

9. The appraiser determined that the estimated market value of the Property was \$33,000,000, approximately \$108,553 per apartment unit. The appraisal is attached hereto as *Exhibit A*.

10. On November 12, 2013, the General Partner of the Partnership sent an Informational Statement and other materials concerning a merger between the Partnership and Seven Pines Holding LLC (the “Merger”) to the limited partners owning 22.3% of the LP Units (“Minority Limited Partners”), including the Levine Trust.

11. In those materials, the General Partner explained that Seven Pines Holding LLC, a Massachusetts limited liability company owned by affiliates of the General Partner, who owned 77.7778% of the outstanding limited partnership units in the Partnership, had proposed a Merger of the Partnership which would be financed by the General Partner and Equity Resource Investments LLC.

12. Because Seven Pines Holding LLC and the General Partner – who indisputably had conflicts of interest in the Merger – had already approved the Merger, the General Partner explained that the Minority Limited Partners’ interests would be cancelled and extinguished regardless of whether the Minority Limited Partners voted in favor of the Merger.

13. The General Partner offered each limited partner two options: (1) elect to receive \$650,000 in cash for each limited partnership unit (“Option 1”); or (2) pay an additional \$10,000 to remain in the Partnership after the Merger (“Option 2”).

14. Under Option 1, the Levine Trust would receive \$325,000 for its limited partnership interest.

15. Because the consideration offered in Option 1 appeared inconsistent with the Property’s recently appraised value, the Levine Trust requested a copy of the 2012 appraisal. It also requested an explanation of how the Partnership reached the merger consideration offered in Option 1.

16. In response to that request, the Partnership provided a copy of the appraisal and also provided a calculation for the consideration offered under Option 1 based on a value for the Property of \$16,734,776, approximately \$55,049 per apartment unit. The spreadsheet provided by the Partnership to the Levine Trust is attached hereto as *Exhibit B*.

17. The Partnership advised the Levine Trust that it reached the value of \$16,734,776 for the Property using a net operating income of \$820,000 and a capitalization rate of 4.9%.

18. On December 6 and 10, 2013, the Levine Trust exercised its dissenters' rights pursuant to Section 121-1102 of the Partnership Act. Those letters are attached hereto as *Exhibits C and D*.

19. At the same time, the Levine Trust requested financial and other Partnership information - to which it was clearly entitled to under the Amended Partnership Agreement and New York law - for the purposes of evaluating the Merger and proposed merger consideration.

20. The Levine Trust requested an income statement, vacancy information, and an explanation of why the Partnership had failed to pay distributions of annual income despite a cash balance of \$3,000,000.

21. Despite the fact that the Levine Trust had a clear entitlement to the aforesaid information under the Amended Partnership Agreement and New York law, the General Partner and the Partnership improperly ignored the Levine Trust's requests.

22. Having never received a response to its requests, the Levine Trust sent a third letter on January 6, 2014.

23. On January 8, 2014, without ever responding to the Levine Trust, the General Partner and Seven Pines Holding LLC consummated the Merger. Though the Agreement and Plan of Merger expressly states that the surviving entity shall provide notice of the Merger to all limited partners, notice was never provided.

24. Following the Merger, the Partnership has utterly failed to comply with its obligations under New York law. Specifically, the Partnership failed to make an offer for Petitioner's dissenting interest as required by Section 121-1105 of the Partnership Act. The Partnership also failed to institute an action within the prescribed time period pursuant to Section 623 of the Corporation Law.

25. Instead, on January 28, 2015 – far beyond the prescribed ten (10) day time period provided for under the Partnership Act – the Partnership wrote to the Levine Trust offering \$325,000 and telling the Levine Trust that the parties could now negotiate for ninety (90) days under Section 121-1105 of the Partnership Act.

26. Given the Partnership's failure to follow the statutory requirements of the Partnership Act, the statement that the parties could negotiate for ninety (90) days was legally wrong and highly improper.

27. Either the Partnership did not understand its obligations under New York law or it was trying to deceive the Levine Trust into missing the deadlines for instituting a statutory proceeding to fix the fair value of its partnership interest.

28. Either way, the Levine Trust recognized the Partnership's legal inaccuracy and explained that it would negotiate in good faith until March 1, 2014. The Levine Trust explained,

however, that given the upcoming statutory deadlines, if the parties could not reach an agreement, it would have no choice but to file the instant action accordingly.

29. Shortly thereafter, the Partnership provided an income statement for 2013. According to that information, the net operating income for 2013 was close to \$1,342,316 with a vacancy rate of 12%.

30. In addition, the Partnership provided a rent-roll for January 2014 in which the vacancy rate for the Property dropped to 6.8%. Based on the January rent-roll the Net Operating Income for 2014 is projected to be \$2,000,000; an increase of \$1,180,000 over the Net Operating Income used by Defendants to calculate the value the Levine Trust's limited partnership interest. *See Exhibit B.*

31. The Levine Trust has asked the Partnership to pay the fair value of its interest. The Partnership has refused.

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. The Levine Trust restates and incorporates the allegations contained in paragraphs 1 through 31 as though fully set forth herein.

33. The Levine Trust filed a valid notice of dissent pursuant to Section 121-1102 of the Partnership Act on December 6, 2013 and December 10, 2013.

34. The Merger was completed on January 8, 2014.

35. Under the Partnership Act, the Partnership was required to make an offer for the fair value of the Levine Trust's limited partnership interest no later than January 18, 2014.

36. It failed to do so.

37. Under the Partnership Act and Section 623 of the Corporation Law, the Partnership was then required to start an action within 20 days of the expiration of the 10-day offer period under Section 121-1105 of the Partnership Act.

38. It failed to do so.

39. Rather than offer to pay the Levine Trust the fair value of its limited partnership interest as of the date of the Merger, the Partnership has offered inconsistent, inadequate valuations of the Property based on arbitrarily selected valuation numbers that change depending on which value the Partnership is trying to back into.

40. The offers that the Partnership has made, both in Option 1 and in the time following the Merger have been inadequate and unreasonable in light of the actual income amounts for the Partnership in 2013, the projected Net Operating Income for 2014, the Partnership's own valuation of the Property for the Merger, and the appraisal performed on the Property in 2012.

41. The Partnership has acted oppressively, vexatiously, and in bad faith in handling the negotiations and offers for the Levine Trust's limited partnership interest.

42. The Partnership has refused to pay the Levine Trust the fair value of its partnership interest.

43. Because of the Partnership's failure to comply with New York law, the Levine Trust has been forced to bring this special proceeding to fix the fair value of its limited partnership interest.

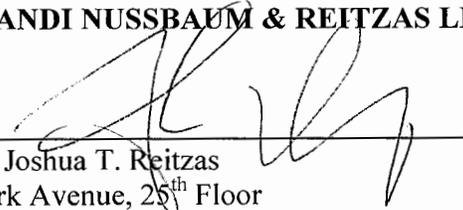
WHEREFORE, Petitioner, the Trustee for the Levine Trust, respectfully requests that this Court grant its petition to fix the fair value of its shares and issue the following:

1. An order fixing the fair value of the Levine Trust's partnership interest as of January 8, 2014 at not less than \$1,573,000.00
2. An order for attorneys' fees, costs and expenses related to this action incurred by the Levine Trust to the Partnership pursuant to Section 623(h)(7) of the New York Business Corporation Law.
3. An order for any other relief that this Court deems just and equitable.

Dated: New York, New York
March 4, 2014

BERLANDI NUSSBAUM & REITZAS LLP

By: _____


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