

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

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In the Matter of the Application of

Index No. 101239-14

Leon Pokoik, individually and as a partner of
Leon Pokoik Family Partners, LP, and Leon
Pokoik Family Partners, LP,

NOTICE OF PETITION

Petitioners,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

- against -

575 Realities, Inc. and
Steinberg & Pokoik Management Corp.,

Respondents.

FILED

NEW YORK
COUNTY CLERKS OFFICE

OCT 27 2014

NOT COMPARED
WITH COPY FILE

JUL 10 2015

NEW YORK
COUNTY CLERKS OFFICE

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TO THE ABOVE NAMED RESPONDENTS:

PLEASE TAKE NOTICE, that upon the annexed verified petition of **LEON POKOIK**, one of the petitioners herein, duly verified October 23 2014, the affidavit of **LEON POKOIK**, duly sworn to on October 23, 2014 2014 in support of the petition, the affirmation of **LELAND S. SOLON, ESQ.**, duly affirmed October 23, 2014, in support of the petition, the exhibits annexed thereto, and upon the determination of the respondents **575 REALTIES, INC. and STEINBERG & POKOIK MANAGEMENT CORP. ("SPMC")** rendered on or about July 9, 2014, upon petitioners' demand dated June 30, 2014, and upon all of the prior pleadings and proceedings had heretofore herein, the undersigned will move this Court, at an I.A.S. Part thereof and before the Justice to be assigned hereto, to be held at the courthouse, at 60 Centre Street, New York, New York, on *December 5, 2014* ^{Room 130} 2014 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard, for a judgment pursuant to Article 78 of the Civil Practice Law and Rules:

a) Directing and compelling the Respondents to forthwith furnish petitioners with the books and records of 575 Realities, Inc. and SPMC relative to the "Salaries" line on Schedule III of the 575 Realities, Inc. and Subsidiaries financial statements for the years 2011 and 2012, including a full breakdown of the identities and amounts received by each person and/or entity, on the grounds that not providing this information to petitioners was a failure by 575 Realities and SPMC to perform a duty enjoined upon them by law; and/or was a determination in violation of lawful procedure, which was affected by an error of law and/or which was arbitrary and capricious and/or which was an abuse of discretion


b) Directing and compelling the Respondents to forthwith furnish petitioners with, for the years 2011 through the present, all books and records of 575 Realities, Inc. and SPMC relative to compensation paid directly or indirectly by 575 Realities, Inc. and Subsidiaries and received by owners, officers, and employees of SPMC, including a full breakdown of the identities and amounts received by each person and/or entity, on the grounds that not providing this information to petitioners was a failure by 575 Realities and SPMC to perform a duty enjoined upon them by law; and/or was a determination in violation of lawful procedure, which was affected by an error of law and/or which was arbitrary and capricious and/or which was an abuse of discretion

(c) awarding petitioners such other and further relief this court deems to be just and proper, including the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 7804(c), an answer to this petition and any supporting affidavits, must be served upon the undersigned and filed herein at least five days prior to the return date hereof.

Dated: Huntington, New York
October 23, 2014

The Law Firm of
GARY N. WEINTRAUB, LLP
Attorneys for Petitioners
Office & P.O. Address
50 Elm Street
Huntington, New York 11743
(631) 421 - 2500

By 

Leland S. Solon

TO: 575 REALTIES, INC.
575 MADISON AVE
NEW YORK, NEW YORK, 10022

STEINBERG & POKOIK MANAGEMENT CORP.
575 MADISON AVE. 7TH FL.
NEW YORK, NEW YORK, 10022

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

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In the Matter of the Application of

Leon Pokoik, individually and as a partner of
Leon Pokoik Family Partners, LP, and Leon
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- against -

575 Realties, Inc. and
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Index No.

VERIFIED PETITION

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

The petitioners, by their attorneys, the Law Firm of Gary N. Weintraub, LLP, respectfully show this court and allege:

1. Petitioner Leon Pokoik is an individual residing at 223 Robin Drive, Sarasota, Florida, 34236.

2. Petitioner Leon Pokoik Family Partners, LP, is a partnership duly organized and existing pursuant to the laws of the State of Delaware.

3. Upon information and belief, respondent 575 Realties, Inc. ("575 Realties") is a corporation duly organized and existing pursuant to the laws of the State of New York, with an office and principal place of business at 575 Madison Ave, New York, NY 10022.

4. Upon information and belief, respondent Steinberg & Pokoik Management Corp. ("SPMC") is a corporation duly organized and existing pursuant to the laws of the State of New York, with an office and principal place of business at 575 Madison Ave, New York, NY 10022.

5. Petitioner Leon Pokoik is a partner in Leon Pokoik Family Partners, LP, which is a shareholder in 575 Realities.

6. SPMC is a real estate managing agent, and a wholly owned subsidiary of 575 Realities.

7. On June 30, 2014, petitioners demanded that respondents provide minutes of proceedings regarding salaries/compensation of 575 Realities and SPMC, as well as:

(3) the books and records of 575 Realities, Inc. and SPMC relative to the "Salaries" line on Schedule III of the 575 Realities, Inc. and Subsidiaries financial statements for the years 2011 and 2012, including a full breakdown of the identities and amounts received by each person and/or entity; and

(4) for the years 2011 through the present, all books and records of 575 Realities, Inc. and SPMC relative to compensation paid directly or indirectly by 575 Realities, Inc. and Subsidiaries and received by owners, officers, and employees of SPMC, including a full breakdown of the identities and amounts received by each person and/or entity;

(See Exhibit B, hereto).

8. By letter dated July 9, 2014, respondents denied the request, stating that petitioners had no rights "to examine the books and records of SPNC" "because shareholders of a parent corporation are not entitled to inspect a subsidiary's books and records." (See Exhibit C, hereto).

9. Upon information and belief, in refusing to provide these documents and under Article 78 of the CPLR, respondents failed to perform a duty enjoined upon it by law; and/or made a determination in violation of lawful procedure, which was affected by an error of law and/or which was arbitrary and capricious and/or which was an abuse of discretion.

10. This proceeding is timely as not more than 120 days have expired since respondents' aforesaid determination not to provide these documents on or about July 9, 2014.

WHEREFORE, it is respectfully requested that the relief sought herein be granted in its entirety, and that petitioners be awarded such other and further relief as to this court shall seem just and proper.

Dated: Huntington, New York
October 23, 2014

The Law Firm of
GARY N. WEINTRAUB, LLP
Attorneys for Petitioners
Office & P.O. Address
50 Elm Street
Huntington, New York 11743
(631) 421 - 2500

By 

Leland S. Solon

VERIFICATION

STATE OF FLORIDA)

:ss.:

COUNTY OF SARASOTA)

LEON POKOIK, being duly sworn, deposes and says:

I am one of the petitioners herein. I have read the foregoing Verified Petition and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

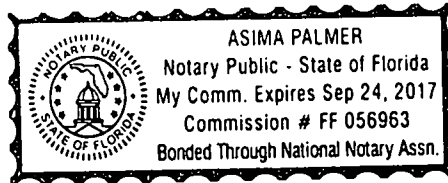

Leon Pokoik

Sworn to before me this

23 day of October, 2014



Notary Public



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

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In the Matter of the Application of

Leon Pokoik, individually and as a partner of
Leon Pokoik Family Partners, LP, and Leon
Pokoik Family Partners, LP,

Index No.

AFFIDAVIT

Petitioners,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

- against -

575 Realities, Inc. and
Steinberg & Pokoik Management Corp.,

Respondents.

-----X

STATE OF FLORIDA)
) ss.:
COUNTY OF SARASOTA)

LEON POKOIK, also known as LEE POKOIK, being duly sworn, deposes and says:

1. I am a partner in Leon Pokoik Family Partners, LP, which is an 8.032 % shareholder in 575 Realities. I have commenced this proceeding in order to obtain information regarding the salaries and compensation that owners / directors/ officers / employees of 575 Realities and SPMC are awarding themselves. 575 Realities leases from an affiliate a commercial office building located at 575 Madison Ave, New York, New York, and net leases the property to another affiliated company. SPMC is a real estate managing agent, and a wholly owned subsidiary of 575 Realities.

2. 575 Realities Inc., and SPMC are dominated by certain family members and cousins, namely Michael Steinberg, the president of 575 Realities. Although Michael Steinberg and some of his close relatives have ownership interests in 575 Realities, I believe they are also abusing their management positions in order to take large salaries and cheat other shareholders, such as myself, and my close family members who are not officers or employees involved in management. I believe that Michael Steinberg, and possibly others, are taking very large salaries while doing little or no work. Michael Steinberg, for instance, lives and spends most of his time in Florida and relatively little time in New York, much less actually managing this or other family-owned businesses.

3. I am now retired and live in Florida, but I used to be more involved in the affairs of the group of entities that owned/operated the 575 Madison Ave. property. During that time, I witnessed large salaries being given to various persons who performed little or no actual work.

4. Over the years, I have been greatly concerned as management salaries have increased substantially for no apparent reason. The salaries taken in connection with SPMC are listed on the annual audited financial statements of 575 Realities, Inc. Copies of the relevant schedules for the last seven years are annexed hereto as Exhibit A. The salaries are summarized as follows:

Year	
Ending	Salaries
Jan 31	
2008	\$1,840,089
2009	\$2,059,022
2010	\$2,138,279
2011	\$2,158,679
2012	\$2,320,266
2013	\$2,103,141
2014	\$2,129,165

5. This year, I began making demands of management to provide me with breakouts of the salary and compensation amounts for these and other entities. Eventually, an in person meeting between my attorney, my accountant, management's attorney, and management's accountants was arranged for June 12, 2014.

6. At that meeting, management's attorney Gary Rappaport advised that any request for information regarding one of the families' corporations would not be considered absent a demand and affidavit in conformity with the Business Cooperation Law.

7. My attorneys had advised me that management's position that demands and affidavits in accordance with the BCL were required was incorrect. However, because management indicated it was not considering my common law request, I thereafter submitted a shareholder demand dated June 30, 2014, invoking BCL 624 and New York State common law. The demand sought minutes of proceedings regarding salaries/compensation (demands 1 and 2), as well as:

(3) the books and records of 575 Realities, Inc. and SPMC relative to the "Salaries" line on Schedule III of the 575 Realities, Inc. and Subsidiaries financial statements for the years 2011 and 2012, including a full breakdown of the identities and amounts received by each person and/or entity; and

(4) for the years 2011 through the present, all books and records of 575 Realities, Inc. and SPMC relative to compensation paid directly or indirectly by 575 Realities, Inc. and Subsidiaries and received by owners, officers, and employees of SPMC, including a full breakdown of the identities and amounts received by each person and/or entity;

8. A copy of that demand, requesting that the document be made available for inspection no later than July 15, 2014, is annexed hereto as Exhibit B.

9. Management responded with a letter dated July 9, 2014 stating that there were no minutes of proceedings regarding salaries/compensation, and also that I had "no right to examine the books and records of SPMC" "because shareholders of a parent corporation are not entitled to inspect a subsidiary's books and records." A copy of that letter is annexed hereto as Exhibit C.

10. My attorney responded with a letter on my behalf dated July 10, 2014 disputing management's position that because SPMC was a wholly-owned corporation of 575 Realities, management had free rein and that no shareholder had informational rights with respect to it. A copy of that letter, reiterating my demands to make the books and records available before July 15 still stood, is annexed hereto as Exhibit D. That same date, I also wrote a letter demanding that management investigate and take legal action regarding any improper salaries/compensation; a copy of the letter is annexed hereto as Exhibit E.

11. Management responded with a letter dated July 15, 2014, stating that management would "take action commensurate with their fiduciary duties to consider and investigate" my demands, and indicating that a response was forthcoming no later than August 15, 2014. A copy of that letter is annexed hereto as Exhibit F. On August 15, 2014, management responded with a letter stating there was no abuse or conflict of interest found. A copy of that letter is annexed hereto as Exhibit G.

12. I am seeking this information in good faith and for proper purpose. I believe that it is wrong that certain people, such as Michael Steinberg, are in effect supplementing their ownership stakes in the companies by taking large salaries and cheating owners who are not employed by the companies out of equity. I am seeking this information to investigate possible fiduciary mismanagement and wasteful dissipation of corporate assets. The accompanying affirmation of Leland S. Solon, Esq. further explains why I am legally entitled to obtain this information as a shareholder under the common law of New York, and refutes management's argument that no shareholder in 575 Realities can obtain documents related to its subsidiary SPMC.

WHEREFORE, it is respectfully requested that the relief sought herein be granted in its entirety, and that petitioners be awarded such other and further relief as to this court shall seem just and proper.



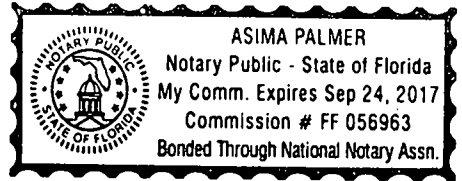
Leon Pokoik

Sworn to before me this

03 day of October, 2014



Notary Public



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

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In the Matter of the Application of

Leon Pokoik, individually and as a partner of
Leon Pokoik Family Partners, LP, and Leon
Pokoik Family Partners, LP,

Petitioners,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

- against -

575 Realities, Inc. and
Steinberg & Pokoik Management Corp.,

Respondents.

-----X

LELAND S. SOLON, an attorney and counselor at law duly admitted to practice before the courts of this state, an associate of **The Law Firm of GARY N. WEINTRAUB, LLP**, attorneys for the petitioners herein, affirms the following to be true under penalties of perjury pursuant to CPLR 2106:

1. I make the affirmation in support of the instant application for a judgment pursuant to Article 78 of the Civil Practice Law and Rules: (a) directing and compelling the respondents to forthwith furnish petitioners with the books and records of 575 Realities, Inc. and SPMC relative to the "Salaries" line on Schedule III of the 575 Realities, Inc. and Subsidiaries financial statements for the years 2011 and 2012, including a full breakdown of the identities and amounts received by each person and/or entity; (b) directing and compelling the respondents to forthwith furnish petitioners with, for the years 2011 through the present, all books and records of 575 Realities, Inc. and SPMC relative to compensation paid directly or indirectly by 575 Realities, Inc. and Subsidiaries and received by owners, officers, and employees of SPMC, including a full breakdown of the identities and amounts received by each person and/or entity; and (c) awarding petitioners such other and further relief this court deems to be just and proper, including the costs and disbursements of this proceeding.

Index No.

AFFIRMATION

2. A copy of the Certificate of Incorporation and By-Laws of 575 Realities Inc. is annexed hereto as Exhibit H. It contains no provision for shareholder inspection of documents.

3. “Under New York law, shareholders have both statutory and common-law rights to inspect a corporation's books and records so long as the shareholders seek the inspection in good faith and for a valid purpose.” *Retirement Plan for General Employees of City of North Miami Beach v. McGraw–Hill Companies, Inc.*, 120 A.D.3d 1052, 992 N.Y.S.2d 220 (1st Dept. 2014) (citing *Matter of Dwyer v. Di Nardo & Metschl, P.C.*, 41 A.D.3d 1177, 1178, 838 N.Y.S.2d 745 (4th Dept.2007)). “The statutory right supplemented, but did not replace, the common-law right.” *Id.*

4. Under BCL 624, “Each corporation shall keep correct and complete books and records of account”; and under BCL 624 (b), a shareholder can demand documents “for any purpose reasonably related to such person’s interest as a shareholder.” For this proceeding, petitioner is relying primarily on the common law, “which is broader than the statutory right.” *Id.*

5. As stated, a shareholder has the “common law” right to inspect books where acting “in good faith” and “for a ‘proper purpose.’” *Crane Co. v. Anaconda Co.*, 39 N.Y.2d 14 (1976) (quoting *In re Steinway*, 159 N.Y. 250 (1899)). See also, *e.g.*, *Hughey v. Du Bois Press*, 36 N.Y.S.2d 220 (N.Y. Sup. 1942) (“A stockholder has the right to examine the books of a corporation to determine whether there has been any mismanagement of its affairs.”); *Berkowitz v. Astro Moving and Storage, Co., Inc.*, 240 A.D.2d 450, 658 N.Y.S.2d 425 (2nd Dept. 1997).

6. Here, petitioner is seeking the documents because he believes management is abusing its authority to improperly give themselves large salaries at the expense of other shareholders. Petitioner is thus seeking the information in good faith and for a proper purpose.

7. Management's contention that they do not need to provide the salary information to petitioner because SPMC is a subsidiary of 575 Realties Inc. and petitioners are not direct shareholders in SPMC must be rejected. In *Retirement Plan for General Employees of City of North Miami Beach, supra*, decided in September 2014, the Appellate Division First Department specifically compelled management of the parent company to provide to its shareholders documents related to its subsidiary. Specifically, the court ordered that the McGraw Hill Company provide to its shareholders documents relating to McGraw Hill's wholly owned subsidiary Standard & Poors, where the shareholders alleged improprieties by the McGraw Hill board's oversight and management of that subsidiary.

8. The same result occurred in *Martin v. Columbia Pictures Co.*, 133 N.Y.S.2d 469 (Sup Ct., NY County 1953), a case granting the petition for inspection of a number of records, including subsidiaries'. As that court stated:

As a stockholder, he is entitled to know the basis for the amounts set forth therein. He is entitled to inquire and ascertain why expenses have apparently risen on a percentage higher than the rise in gross income. He is entitled to inquire and ascertain why profits have apparently fallen in the face of an increased volume of business. **He is entitled to know whether affiliated or subsidiary companies contribute to the assets of Columbia or are a means of siphoning off profitable operations from the parent corporation.**

Inasmuch as an inspection of the corporate books and records is the only means by which petitioner can be advised of such matters, I find that in seeking such relief petitioner has acted in good faith, in the honest belief that such inspection is necessary in order to protect his substantial investment in Columbia and with no objective foreign thereto.

9. Copies of both the *Retirement Plan for General Employees of City of North Miami Beach* and *Martin* decisions are annexed hereto as Exhibit I.

WHEREFORE, it is respectfully requested that the relief sought herein be granted in its entirety, and that petitioners be awarded such other and further relief as to this court shall seem just and proper.

Dated: Huntington, New York
October 23, 2014



Leland S. Solon

575 Realities, Inc. and Subsidiaries
Schedule III
Revenue and Expenses of S&P Management Corp. (Income Tax Basis)
Years Ended January 31, 2014 and 2013

	2014	2013
Revenue		
Management fee income	\$ 2,357,755	\$ 2,313,862
Contracting income (net)	14,166	25,981
Technical support	<u>310,000</u>	<u>310,000</u>
	2,681,921	2,649,843
Operating expenses		
Salaries	\$ 2,129,165	\$ 2,103,141
Payroll taxes	110,383	124,485
Medical insurance	264,517	212,670
Pension and welfare	108,060	99,762
Computer expense	18,794	19,588
Travel and entertainment	529	839
Office expenses	95,153	101,650
Insurance	20,492	25,750
Professional fees	20,663	38,940
Miscellaneous	<u>90,172</u>	<u>82,529</u>
	2,857,928	2,809,354
	(176,007)	(159,511)
Other income (loss)		
Interest and dividend income (including share from partnerships)	10	21
Share of ordinary (loss) of Crescent Run Limited Partnership (affiliated limited partnership) (not including portfolio income included above)	<u>(3,266)</u>	<u>(2,824)</u>
Excess of expenses over revenue before depreciation, rent expense and income taxes	(179,263)	(162,314)
Depreciation	523	798
Rent expense to affiliate	<u>10,000</u>	<u>14,000</u>
Excess of expenses over revenue before income tax provision	<u>\$ (189,786)</u>	<u>\$ (177,112)</u>

See Independent Accountants' Review Report
The Notes to Consolidated Financial Statements are an integral part of these statements

575 Realties, Inc. and Subsidiaries
Schedule III
Revenue and Expenses of S&P Management Corp. (Income Tax Basis)
Years Ended January 31, 2012 and 2011

	2012	
Revenue		\$ 2,273,261
Management fee income		116,422
Contracting income (net)		310,000
Technical support		<u>2,699,683</u>
Operating expenses	\$ 2,320,266	
Salaries	133,299	
Payroll taxes	229,424	
Medical insurance	123,250	
Pension and welfare	45,336	
Computer expense	1,290	
Travel and entertainment	109,346	
Office expenses	25,877	
Insurance	71,853	
Professional fees	159,740	<u>3,219,681</u>
Miscellaneous		(519,900)
Other income (loss)		
Interest and dividend income (including share from partnerships)		
Share of ordinary (loss) of Crescent Run Limited Partnership (affiliated limited partnership) (not including portfolio income included above)		<u>(2,100,000)</u>
Excess of expenses over revenue before depreciation, rent expense and income taxes		(522,100)
Depreciation		3,900
Rent expense to affiliate		<u>13,000</u>
Excess of expenses over revenue before income tax provision		<u>\$ (539,000)</u>

See Independent Accountants' Review Report.
The Notes to Financial Statements are an integral part of these statements.

575 REALTIES, INC. AND SUBSIDIARIES

SCHEDULE III

REVENUE AND EXPENSES OF S&P MANAGEMENT CORP.
(INCOME TAX BASIS)

Year Ended
January 31, 2011

Revenue:		
Management fee income		\$ 2,374,740
Contracting income (net)		95,838
Technical support		335,833
Consulting fees		
Total		2,806,411
Operating expenses:		
Salaries	\$ 2,158,679	
Payroll taxes	119,341	
Medical insurance	250,911	
Pension and welfare	105,189	
Computer expense	12,225	
Travel and entertainment	24,967	
Office expenses	62,087	
Insurance	25,629	
Professional fees	153,377	
Miscellaneous	71,579	2,983,984
Balance		(177,573)
Other income (loss):		
Interest and dividend income (including share from partnership investments)		868
Share of ordinary (loss) of Crescent Run Limited Partnership (affiliated limited partnership) (not including portfolio income included above)		(177,573)
(Excess of expenses over revenue) before depreciation, rent expense and income taxes		(176,705)
Depreciation		119,700
Rent expense to affiliate		16,000
(EXCESS OF EXPENSES OVER REVENUE) BEFORE INCOME TAXES		\$ (312,555)

Attention is directed to the notes to consolidated financial statements and to the independent accountants' review report relating to this schedule.

Year Ended
January 31, 2010

\$ 2,130,286
12,431
310,000
125,000
2,577,717

2,138,279
115,716
163,089
100,713
14,557
5,006
42,842
17,841
52,729
82,303 2,733,075

(155,358)

1,297

(4,444)

(158,505)

4,160

12,000

\$ (174,665)

575 REALTIES, INC. AND SUBSIDIARIES

SCHEDULE IV

REVENUE AND EXPENSES OF S&P MANAGEMENT CORP.
(INCOME TAX BASIS)

	Year Ended January 31, 2009
Revenue:	
Management fee income	\$ 2,048,353
Contracting income (net)	30,990
Technical support	200,000
Consulting fees	125,000
Total	<u>2,404,343</u>
Operating expenses:	
Salaries	\$ 2,059,022
Payroll taxes	105,112
Medical insurance	142,011
Pension and welfare	96,951
Computer expense	20,049
Travel and entertainment	4,499
Office expenses	50,284
Insurance	49,483
Professional fees	28,970
Miscellaneous	103,949
Balance	<u>2,660,330</u>
	(255,987)
Other income (loss):	
Interest and dividend income (including share from partnership investments)	1,724
Share of ordinary (loss) of Crescent Run Limited Partnership (affiliated limited partnership) (not including portfolio income included above)	<u>(10,433)</u>
(Excess of expenses over revenue) before depreciation, rent expense and income taxes	(264,696)
Depreciation	4,790
Rent expense to affiliate	<u>12,000</u>
(EXCESS OF EXPENSES OVER REVENUE) BEFORE INCOME TAXES	<u>\$ (281,486)</u>

Attention is directed to the independent auditors' qualified report on the basic financial statements (pages 1 and 2), the report on this supplemental schedule (page 13) and to the notes to consolidated financial statements.

Year Ended
January 31, 2008

\$ 2,041,887
39,567
190,000
125,000
2,396,454

1,840,089
104,841
133,872
88,162
23,361
4,385
36,427
51,444
30,335
197,077 2,509,993

(113,539)

4,358

(3,087)

(112,268)
4,714
12,000

\$ (128,982)

THE LAW FIRM OF
GARY N. WEINTRAUB, LLP



50 ELM STREET
HUNTINGTON, NEW YORK 11743

GARY N. WEINTRAUB
MIRIAM SOLON WEINTRAUB
ALEXANDER VON KIEL
LELAND S. SOLON
PARALEGAL
LINDA CLARK O'SHEA

TELEPHONE
631-421-2500
FAX
631-421-2565

July 1, 2014

Via Certified Mail,
Email & Fax to 212-421-6196

575 Realties, Inc.
575 Madison Avenue, 7th FL
New York, New York 10022

Steinberg & Pokoik Management Corp.
575 Madison Avenue, 7th FL
New York, New York 10022

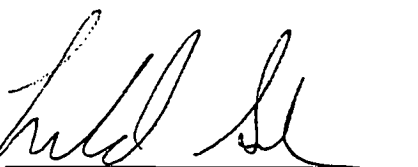
Robert M. Safron, Esq.
Patterson Belknap Webb & Tyler. LLP
1133 Avenue of Americas
New York, NY 10036-6710
RMSAFRON@PBWT.com

Re: 575 Realties, Inc., Steinberg & Pokoik Management Corp.

Dear Sirs:

Please see attached demand and affidavit of shareholder Leon Pokoik.

The Law Firm of
GARY N. WEINTRAUB, LLP

By 
Leland S. Solon

CC: Leon Pokoik

**SHAREHOLDER DEMAND FOR INSPECTION OF BOOKS AND RECORDS
AND MINUTES OF THE PROCEEDINGS OF ITS SHAREHOLDERS**

Date: June 30, 2014

To: 575 Realties, Inc., Steinberg & Pokoik Management Corp.

The undersigned is and has been a shareholder of record of 575 Realties, Inc., and its wholly-owned subsidiary, Steinberg & Pokoik Management Corp. ("SPMC").

Pursuant to BCL § 624 and the common law of the State of New York, the undersigned shareholder demands that at a time no later than the opening of business on July 15, 2014, 575 Realties, Inc. and SPMC make available for inspection, examination, and copying, at 575 Madison Avenue, New York, New York 10022, or such other place as may be mutually agreed upon,

(1) all minutes of the proceedings of the shareholders of 575 Realties, Inc. and SPMC with respect to the "Salaries" line on Schedule III of the 575 Realties, Inc. and Subsidiaries financial statement for 2011 and 2012;

(2) for the years 2011 through the present, all minutes of the proceedings of the shareholders of 575 Realties, Inc. and SPMC relative to compensation paid directly or indirectly by 575 Realties, Inc. and Subsidiaries and received by owners, officers, and/or employees of SPMC;

(3) the books and records of 575 Realties, Inc. and SPMC relative to the "Salaries" line on Schedule III of the 575 Realties, Inc. and Subsidiaries financial statements for the years 2011 and 2012, including a full breakdown of the identities and amounts received by each person and/or entity; and

(4) for the years 2011 through the present, all books and records of 575 Realties, Inc. and SPMC relative to compensation paid directly or indirectly by 575 Realties, Inc. and Subsidiaries and received by owners, officers, and employees of SPMC, including a full breakdown of the identities and amounts received by each person and/or entity; and

Annexed to this demand, and sworn to by the undersigned, is the affidavit in accordance with BCL § 624(c).

The undersigned will bear the reasonable costs incurred by 575 Realties, Inc. and SPMC (including those of their transfer agents) in connection with the production of the above information.

This demand is made for a purpose reasonably related to my interest as a shareholder in 575 Realties, Inc. and its wholly-owned subsidiary, SPMC, to wit: to ensure that corporate assets are not dissipated and to ensure that the salaries paid are proper.

The undersigned hereby designates and authorizes Leland S. Solon, Esq. of the Law Firm of Gary N. Weintraub, LLP, 50 Elm Street, Huntington, New York, 11743, (631) 421 – 2500, and their employees, and any other person designated by the undersigned, acting singly or together, to conduct as the undersigned's agents the examination and copying herein requested.

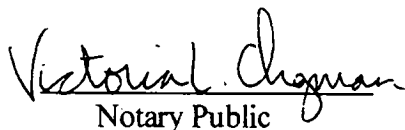
Please advise Mr. Solon when and where the items demanded above will be available to the undersigned.



Leon Pokoik

Sworn to before me this

30th day of June, 2014


Notary Public

VICTORIA L. CHAPMAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 01CH6095368
QUALIFIED IN SUFFOLK COUNTY
MY COMMISSION EXPIRES JULY 7, 2015

**TO: 575 REALTIES, INC.
STEINBERG & POKOIK MANAGEMENT CORP.**

STATE OF NEW YORK)

:ss.:

COUNTY OF NEW YORK)

LEON POKOIK, being duly sworn, deposes and says:

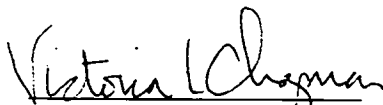
1. The inspection is not desired for a purpose which is in the interest of a business or object other than the business of the corporations.
2. Deponent has not within five years sold or offered for sale any list of shareholders of any corporation of any type or kind, whether or not formed under the laws of this state, or aided or abetted any person in procuring any such record of shareholders for any such purpose.



Leon Pokoik

Sworn to before me this

30th day of June, 2014



Notary Public

**VICTORIA L. CHAPMAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 01CH6095368
QUALIFIED IN SUFFOLK COUNTY
MY COMMISSION EXPIRES JULY 7, 2015**

Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 fax 212.336.2222 www.pbwt.com

July 9, 2014

John D. Winter
Partner
(212) 336-2836
Direct Fax: (212) 336-2369
jwinter@pbwt.com

Leland S. Solon, Esq.
Law Firm of Gary N. Weintraub, LLP
50 Elm Street
Huntington, NY 11743

Re: Request for Books and Records

Dear Mr. Solon:

We are writing in response to your client's demand dated June 30, 2014 with 575 Realities, Inc. and Steinberg & Pokoik Management Corp. ("SPMC") reserving all their respective rights regarding what they believe are improper demands to review records and nothing contained herein or omitted shall constitute a waiver of such rights.

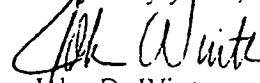
First, in neither an individual nor representative capacity is your client a shareholder of SPMC. Therefore, he is not entitled to that company's books and records pursuant to New York's Business Corporation Law. That a trust affiliated with your client is a shareholder in 575 Realities, Inc. does not create any rights to examine the books and records of SPMC because shareholders of a parent corporation are not entitled to inspect a subsidiary's books and records.

Second, your client's requests ask for minutes of meetings of 575 Realities, Inc. and SPMC for 2011 and 2012 that discuss "salaries" and/or compensation relating to a specific schedule to financial statements of 575 Realities, Inc. We reviewed the minutes of 575 Realities, Inc. as well as the minutes for SPMC for 2011 and 2012 and there is no reference to salaries or compensation in the minutes.

Third, for decades your client has been receiving financial statements for 575 Realities, Inc. which have had a line item for the "salaries" of SPMC. Our client has no record of your client ever questioning, objecting or even inquiring in any manner as to the amounts paid for salaries or compensation, including during the many years that your client served as an officer and director of 575 Realities, Inc. and employee of SPMC.

Your client has been invited to meet with Michael Steinberg directly, without any preconditions, to discuss legitimate business concerns your client may have. This offer remains open.

Very truly yours,


John D. Winter

THE LAW FIRM OF
GARY N. WEINTRAUB, LLP



50 ELM STREET
HUNTINGTON, NEW YORK 11743

GARY N. WEINTRAUB
MIRIAM SOLON WEINTRAUB
ALEXANDER VON KIEL
LELAND S. SOLON
PARALEGAL
LINDA CLARK O'SHEA

TELEPHONE
631-421-2500
FAX
631-421-2565

July 10, 2014

Via First Class Mail & Email

John D. Winter
Patterson Belknap Webb & Tyler, LLP
1133 Avenue of Americas
New York, NY 10036-6710
JWinter@PBWT.com

Re: 575 Realties, Inc., Steinberg & Pokoik Management Corp.

Dear Mr. Winter,

Contrary to what you claim, Leon Pokoik is an individual shareholder in 575 Realties, Inc. In either event, it should make no difference and management should not be raising this (erroneous) understanding as to form of ownership as a pretext for denying access and transparency. Furthermore, management's position that because SPMC is a wholly-owned subsidiary of 575 Realties, Inc., no shareholder has legal informational rights with respect to it, and 575 Realties, Inc.'s directors have free rein to do what they wish in terms of SPMC, with respect to salaries, conflicts of interests, etc., is indefensible and will not stand up in court.

The demand to make the books and records available for inspection on or before July 15, 2014 still stands. Should management fail to honor it by then, appropriate action will be taken against them in Supreme Court.

The Law Firm of
GARY N. WEINTRAUB, LLP

By

A handwritten signature in black ink, appearing to read "Leland S. Solon", written over a horizontal line.

Leland S. Solon

CC: Leon Pokoik

LEON POKOIK
223 ROBIN DRIVE
SARASOTA, FLORIDA 34236

July 10, 2014

Via First Class Mail,
& Fax to 212-421-6196

575 Realties, Inc.
575 Madison Avenue, 7th FL
New York, New York 10022

Steinberg & Pokoik Management Corp.
575 Madison Avenue, 7th FL
New York, New York 10022

Re: 575 Realties, Inc., Steinberg & Pokoik Management Corp.

Dear Sirs:

I believe that the salaries awarded by owners to themselves and/or their family members is a conflict of interest and presents serious concerns for abuse. According to the financial statements provided by management, annual salaries paid to Steinberg & Pokoik Management Corp. ("SPMC") paid by 575 Realties, Inc. have increased approximately half-a-million dollars over the past several years. Furthermore, I believe that Michael Steinberg is receiving a "salary" from SPMC paid by 575 Realties, Inc., despite the fact that I believe he spends most of his time in Florida and the Hamptons.

I hereby demand that management, the directors and officers of 575 Realties, Inc. and SPMC investigate and take legal action against any owner or family member of an owner of 575 Realties, Inc. who has been receiving unwarranted, duplicative, inflated and/or otherwise inappropriate salaries/ compensation paid by 575 Realties, Inc. and received by that person or persons through SPMC.



Leon Pokoik

Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 fax 212.336.2222 www.pbwt.com

July 15, 2014

John D. Winter
Partner
(212) 336-2836
Direct Fax: (212) 336-2369
jwinter@pbwt.com

Leland S. Solon, Esq.
Law Firm of Gary N. Weintraub, LLP
50 Elm Street
Huntington, NY 11743

**Re: 575 Realities, Inc. and
Steinberg & Pokoik Management Corp.
Shareholder Demand Letter**

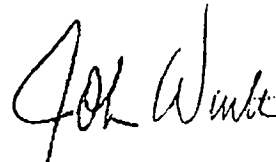
Dear Mr. Solon:

We write in response to your client's demand letter dated July 10, 2014 regarding concerns about the salaries paid by 575 Realities, Inc. and Steinberg & Pokoik Management Corp. ("SPMC") with 575 Realities, Inc. and SPMC reserving all their respective rights regarding what they believe are improper demands to review records and nothing contained herein or omitted shall constitute a waiver of such rights. We understand that your client has demanded that 575 Realities and SPMC investigate this matter and take action with regard to any "inappropriate" salaries. 575 Realities and SPMC take this claim seriously.

The management of 575 Realities and SPMC will take action commensurate with their fiduciary duties to consider and investigate your client's shareholder demands. We will respond to you within a reasonable amount of time, but not later than August 15, 2014.

We reiterate that your client has been invited to meet with Michael Steinberg directly, without any preconditions, to discuss legitimate business concerns your client may have. This offer remains open.

Very truly yours,



John D. Winter

Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 fax 212.336.2222 www.pbwt.com

August 15, 2014

John D. Winter
Partner
(212) 336-2836
Direct Fax: (212) 336-2369
jwinter@pbwt.com

Leland S. Solon, Esq.
Law Firm of Gary N. Weintraub, LLP
50 Elm Street
Huntington, NY 11743

**Re: 575 Realities, Inc. and Steinberg & Pokoik Management Corp.
Shareholder Demand Letter**

Dear Mr. Solon:

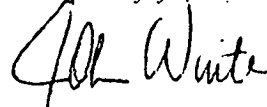
We write in response to your client's July 10, 2014 letter regarding his concerns about the annual salaries paid by 575 Realities, Inc. and Steinberg & Pokoik Management Corp. ("SPMC"). As we have previously stated, your client is not a shareholder of SPMC in either an individual or representative capacity. He therefore does not have standing to make a shareholder demand on that corporation. 575 and SPMC reserve all their respective rights on this issue.

This notwithstanding, at your client's request the management of 575 and SPMC, in conjunction with our firm, has investigated the propriety of these salaries. Because of Mr. Pokoik's concern about Michael Steinberg's salary in particular, Mr. Steinberg did not take part in either this inquiry or the management's final decision.

Through this investigation we confirmed that the salaries paid by 575 and SPMC are both commensurate with the executive roles being performed and well within the range of salaries paid to parallel employees at comparable companies. We have likewise found no indication of any abuse or conflict of interest in the payment of these salaries.

The management of 575 and SPMC has therefore considered and unanimously decided to refuse your client's demand to take legal action. In the exercise of its business judgment, the management has determined that any claims based on these allegations would be without merit, and therefore it is in the best interests of the corporations that no such claims be pursued.

Very truly yours,


John D. Winter

"COPY"

Certificate of Incorporation of

575 REALTIES, INC.

under Section 402 of the Business Corporation Law

IT IS HEREBY CERTIFIED THAT:

(1) *The name of the proposed corporation is*

575 REALTIES, INC.

(2) *The purpose or purposes for which this corporation is formed, are as follows, to wit:*

(a) To take, purchase, exchange, hire, lease or otherwise acquire, and to own and hold unlimitedly, within and without the State of New York, to occupy, control, maintain, manage, sell, convey, exchange, lease, sublease, or otherwise alienate or dispose of, and to mortgage, or otherwise encumber, and to otherwise deal in real estate, either improved or unimproved, and any interest or right therein.

(b) To erect or cause to be erected, construct or cause to be constructed, to maintain, improve, rebuild, enlarge alter, repair, raise, and remove, and to buy, sell, own, use, occupy, manage, lease and control, any and all kinds of buildings, houses, stores, lofts, offices, warehouses, mills, shops, factories, hotels, restaurants, apartments, tenements, machinery, plants, edifices, works, and structures of every kind, nature and description.

The corporation, in furtherance of its corporate purposes above set forth, shall have all of the powers enumerated in Section 202 of the Business Corporation Law, subject to any limitations provided in the Business Corporation Law or any other statute of the State of New York.

(3) The office of the corporation is to be located in the

City of New York,
(city) (town) (incorporated village)

✱

County of New York, and State of New York.

(4) The aggregate number of shares which the corporation shall have the authority to issue is 2000 shares of no par value stock.

(5) The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is : 26th floor, 575 Madison Avenue, New York 22, New York

[Faint, illegible text]

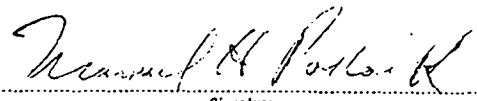
[Faint, illegible text]

The undersigned incorporator, ~~or each of them if there are more than one~~, is of the age of twenty-one years or over.

IN WITNESS WHEREOF, this certificate has been executed this 24th day of January, 1964.

MANUEL H. POKOIK

Type name of incorporator



Signature

Cayuga Trail (no street number), Harrison, New York.

Address

Type name of incorporator

Signature

Address

Type name of incorporator

Signature

Address

STATE OF NEW YORK,
COUNTY OF NEW YORK

} ss.:

On this 24th day of January, 1964, before me personally came
MANUEL H. POKOIK

to me known to be the person described in and who executed the foregoing certificate of incorporation and
he thereupon (~~separately~~) duly acknowledged to me that he executed the same.

BARBARA GELLIS
Notary Public State of New York
No. 03-6485350
Qualified in Brox County
Commission Expires March 30, 1964

Certificate of Incorporation

of

575 REALTIES, INC.

under Section 402 of the Business Corporation Law

Filed By:

MANUEL H. POKOIK
Attorney at Law

Office and Post Office Address
575 Madison Avenue
New York 22, N. Y.

BY-LAWS
OF
575 REALTIES, INC.

ARTICLE I. SHAREHOLDERS' MEETING

Section 1. — Annual Meeting.

The annual meeting of the shareholders shall be held on the *1st* day of *February* of each year, at *10* o'clock in the *fore* noon, at the principal office of the corporation, or such place as the Board of Directors shall authorize. The meeting shall be for the purpose of electing directors and for the transaction of such business as may be brought before it. If such date should be a legal holiday, the meeting shall be held on the next business day following, at the same hour. Notice of such meeting shall be given by the Secretary as required by law; by serving personally or mailing not less than ten days and not more than fifty days previous to such meeting, postage prepaid, a copy of such notice, addressed to each shareholder entitled to vote at such meeting. Any and all notices of such meeting may be waived by any shareholder by written waiver or by attendance thereat, whether in person or by proxy.

Section 2. — Special Meetings.

Special meetings of shareholders may be called by the Board of Directors or by the President, and must be called by the President at the request in writing by shareholders owning a majority

of the shares issued and outstanding. Notice of such special meetings shall be given by the President or the Secretary, and shall be served personally or by mail addressed to each shareholder of record at his last known address no less than ten days prior to the date of such meeting.

The notice of such meeting shall contain a statement of the business to be transacted thereat. No business other than that specified in the notice of the meeting shall be transacted at any such special meeting. Notice of special meeting may be waived by any shareholder by written waiver or by attendance thereat, in person or by proxy.

Section 3. — Voting.

Shareholders entitled to vote at meetings may do so in person or by proxy appointed by an instrument in writing subscribed by the shareholder or by his duly authorized attorney. Each shareholder shall be entitled to one vote for each share registered in his name on the books of the Corporation, unless otherwise provided in the Certificate of Incorporation.

Section 4. — Quorum.

At any meeting of the shareholders, except as otherwise provided by statute, or by the Certificate of Incorporation, or by these By-Laws, the holders of a majority of the shares entitled to vote thereat shall constitute a quorum. However, a lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented.

Section 5. — Voting at Shareholders' Meetings.

At any meeting of the shareholders, except as otherwise provided by statute, or by the Certificate of Incorporation, or by these By-Laws, the vote of the holders of a majority of the shares present in person or by proxy shall decide any question brought before such meeting.

ARTICLE II. DIRECTORS

Section 1. — Number.

The affairs and the business of the Corporation, except as otherwise provided in the Certificate of Incorporation, shall be managed by a Board of *four* Directors.

Section 2. — How Elected.

At the annual meeting of shareholders, the persons duly elected by the votes cast at the election held thereat shall become the directors for the ensuing year.

Section 3. — Term of Office.

The term of office of each of the directors shall be until the next annual meeting of shareholders and thereafter until a successor has been elected and qualified.

Section 4. — Duties of Directors.

The Board of Directors shall have the control and general management of the affairs and business of the Corporation unless otherwise provided in the certificate of Incorporation. Such directors shall in all cases act as a Board regularly convened by a majority, and they may adopt such rules and regulations for the conduct of their meetings, and the management and business of the Corporation as they may deem proper, not inconsistent with these By-Laws and the Laws of the State of New York.

Section 5. — Directors' Meetings.

Regular meetings of the Board of Directors shall be held immediately following the annual meetings of the shareholders, and at such other times as the Board of Directors may determine. Special meetings of the Board of Directors may be called by the President at any time and must be called by the President or the Secretary upon the written request of two Directors.

Section 6. — Notice of Special Meetings.

Notice of special meetings of the Board of Directors shall be served personally or by mail addressed to each Director at his last known address no less than five days prior to the date of such meeting. The notice of such meeting shall contain a statement of the business to be transacted thereat. No business other than that specified in the call for the meeting shall be transacted at any such special meeting. Notice of special meeting may be waived by any Director by written waiver or by personal attendance thereat without protest of lack of notice to him.

Section 7. — Quorum.

At any meeting of the Board of Directors, except as otherwise provided by the Certificate of Incorporation, or by these By-Laws, a majority of the Board of Directors shall constitute a quorum. However, a lesser number when not constituting a quorum may adjourn the meeting from time to time until a quorum shall be present or represented.

Section 8. — Voting.

Except as otherwise provided by statute, or by the Certificate of Incorporation, or by these By-Laws, the affirmative vote of a majority of the Directors present at any meeting of the Board of Directors at which a quorum is present shall be necessary for the transaction of any item of business thereat.

Section 9. — Vacancies.

Unless otherwise provided in the Certificate of Incorporation, vacancies in the Board of Directors occurring between annual meetings of the shareholders shall be filled for the unexpired portion of the term by a majority vote of the remaining Directors, even though less than a quorum exists.

Section 10. — Removal of Directors.

Any or all of the directors may be removed, either with or without cause at any time by a vote of the shareholders at any meeting called for such purpose.

ARTICLE III. OFFICERS

Section 1. — Number of Officers.

The officers of the Corporation shall be a President, a Vice-President, a Treasurer and Secretary, and any officer may hold more than one office, except the same person may not hold the offices of President and Secretary. The Board of Directors may appoint such other officers, agents and employees as in their sole discretion they shall deem advisable, who shall be subject to recall at all times by a majority vote of the Board of Directors.

Section 2. — Election of Officers.

Officers of the Corporation shall be elected at the first meeting of the Board of Directors. Thereafter, and unless otherwise provided in the Certificate of Incorporation, the officers of the Corporation shall be elected annually by the Board of Directors at its meeting held immediately after the annual meeting of shareholders and shall hold office for one year and until their successors have been duly elected and qualified.

Section 3. — Removal of Officers.

Any officer elected by the Board of Directors may be removed, with or without cause, and a successor elected, by vote of the Board of Directors, regularly convened at a regular or special meeting. Any officer elected by the shareholders may be removed, with or without cause, and a successor elected, by vote of the shareholders, regularly convened at an annual or special meeting.

Section 4. — President.

The President shall be the chief executive officer of the Corporation and shall have general charge of the business, affairs and property thereof, subject to direction of the Board of Directors, and shall have general supervision over its officers and agents. He shall, if present, preside at all meetings of the Board of Directors in the absence of a Chairman of the Board and at all meetings of shareholders. He may do and perform all acts incident to the office of President.

Section 5. — Vice-President.

In the absence of or inability of the President to act, the Vice-President shall perform the duties and exercise the powers of the President and shall perform such other functions as the Board of Directors may from time to time prescribe.

Section 6. — Secretary.

The Secretary shall:

- a) Keep the minutes of the meetings of the Board of Directors and of the shareholders in appropriate books.
- b) Give and serve all notice of all meetings of the Corporation.
- c) Be custodian of the records and of the seal of the Corporation and affix the latter to such instruments or documents as may be authorized by the Board of Directors.

d) Keep the shareholder records in such a manner as to show at any time the amount of shares, the manner and the time the same was paid for, the names of the owners thereof alphabetically arranged and their respective places of residence, or their Post Office addresses, the number of shares owned by each of them and the time at which each person became owner, and keep such shareholder records available daily during the usual business hours at the office of the Corporation subject to the inspection of any person duly authorized, as prescribed by law.

e) Do and perform all other duties incident to the office of Secretary.

Section 7. — Treasurer.

The Treasurer shall:

a) Have the care and custody of and be responsible for all of the funds and securities of the Corporation and deposit of such funds in the name and to the credit of the Corporation in such a bank and safe deposit vaults as the Directors may designate.

b) Exhibit at all reasonable times his books and accounts to any Director or shareholder of the Corporation upon application at the office of the Corporation during business hours.

c) Render a statement of the condition of the finances of the Corporation at each stated meeting of the Board of Directors if called upon to do so, and a full financial report at the annual meeting of

shareholders. He shall keep at the office of the Corporation correct books of account of all of its business and transactions and such books of account as the Board of Directors may require. He shall do and perform all other duties incident to the office of Treasurer.

Section 8. — Duties of Officers May Be Delegated.

In the case of the absence of any officer of the Corporation, or for any reason the Board may deem sufficient, the Board may, except as otherwise provided in these By-Laws, delegate the powers or duties of such officers to any other officer or any Director for the time being, provided a majority of the entire Board concur therein.

Section 9. — Vacancies — How Filled.

Should any vacancy in any office occur by death, resignation or otherwise, the same shall be filled, without undue delay, by the Board of Directors at its next regular meeting or at a special meeting called for that purpose, except as otherwise provided in the Certificate of Incorporation.

Section 10. — Compensation of Officers.

The officers shall receive such salary or compensation as may be fixed and determined by the Board of Directors, except as otherwise provided in the certificate of Incorporation.

ARTICLE IV. CERTIFICATES REPRESENTING SHARES

Section 1. — Issue of Certificates Representing Shares.

The President shall cause to be issued to each shareholder one or more certificates, under the seal of the Corporation, signed by the President (or Vice-President) or Chairman or Vice-Chairman of the Board and the Treasurer (or Secretary) certifying the number of shares owned by him in the Corporation.

Section 2. — Transfer of Shares.

The shares of the Corporation shall be transferable only upon its books by the registered holders thereof in person or by their duly authorized attorneys or legal representatives. The former certificates must be surrendered to the Secretary, or to such other person as the Directors may designate, by whom they shall be cancelled, and new certificates shall thereupon be issued. No transfer of shares shall be made within ten days next preceding the annual meeting of shareholders.

Section 3. — Lost Certificates.

If the holder of any shares shall lose the certificate thereof, he shall immediately notify the Corporation of such fact and the Board of Directors may then cause a new certificate to be issued to him subject to the deposit of a bond or other indemnity in such form and with such sureties if any as the Board may require.

ARTICLE IV-A. STOCKHOLDER LOANS

Loans from stockholders which are made or pledged simultaneously with subscription to stock shall not be redeemable or payable prior to May 30, 1982 unless the Board of Directors shall determine that payment will not adversely affect the working capital of the corporation provided, however, that if the corporation shall, at any time prior to May 30, 1982, sell, assign or transfer the lease on premises 575 Madison Avenue, such loans shall become due and payable ten days after the closing of such sale, assignment or transfer.

The Board of Directors shall also have the right at any time to convert all or a portion of such stockholder loans into additional shares of stock at a price to be fixed by the Board of Directors, but not less than the cost per share of the stock issued to the stockholders at the time the loans are made.

ARTICLE V. SEAL

The seal of the Corporation shall be as follows:

ARTICLE VI. DIVIDENDS OR OTHER DISTRIBUTIONS

The Corporation, by vote of the Board of Directors, may declare and pay dividends or make other distributions in cash or its bonds or its property on its outstanding shares to the extent as provided and permitted by law, unless contrary to any restriction contained in the Certificate of Incorporation.

ARTICLE VII. NEGOTIABLE INSTRUMENTS

All checks, notes or other negotiable instruments shall be signed on behalf of this Corporation by such of the officers, agents and employees as the Board of Directors may from time to time designate, except as otherwise provided in the certificate of Incorporation.

ARTICLE VIII. FISCAL YEAR

The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

ARTICLE IX. OFFICES

The principal office of the Corporation shall be located in the City of *New York*, County of *New York*, State of New York. The Board of Directors may from time to time designate such other offices within or without the State of New York as the business of the Corporation may require.

ARTICLE X. AMENDMENTS

By-laws may be amended, repealed or adopted by vote of the holders of the shares at the time entitled to vote in the election of any Directors, and may be amended, repealed or adopted as otherwise provided by law.

On motion duly made and carried the meeting proceeded to consider the matter of amending the By-Laws to include the following amendments and additions and by way of amendments duly passed and carried it was resolved that the corporation's By-Laws contain the following provisions:

- a) "In any election or determination wherein stockholders vote, either cast directly by stockholder or their proxy, fractional voting shall be permitted."
- b) "Any payments made to an officer of the Corporation such as salary, commission, bonus, interest, or rent, or entertainment expense incurred by him, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service, shall be reimbursed by such officer to the Corporation to the full extent of such disallowance. It shall be the duty of the Directors, as a Board, to enforce payment of each such amount disallowed. In lieu of payment by the officer, subject to the determination of the Directors, proportionate amounts may be withheld from his future compensation payments until the amount owed to the corporation has been recovered."

There being no further business, the meeting was, on motion, adjourned.

Dated the 15th day of March, 1968.

Isaac H. Podack
Chairman

Donald Steiner
Secretary

575 Realities, Inc.

Action of the
Shareholders Without a Meeting

The undersigned, being all of the shareholders of 575 Realities, Inc., a New York corporation (the "Corporation"), do hereby consent, pursuant to Section 615 of the Business Corporation Law, to the adoption of the actions and resolutions hereinafter set forth.

1. Fixing Number of Directors

RESOLVED, that section 1, Article II of the By-Laws of the Corporation is amended to read as follows:

"The number of directors of the Corporation may be determined from time to time by resolution adopted by a majority of the entire board of directors. Until the first such resolution is adopted, the Board of Directors shall consist of seven directors."

2. Election of Board of Directors.

RESOLVED, that the following individuals are elected to serve as directors of the Corporation in accordance with the By-Laws until the first annual meeting of shareholders after the date hereof and until their successors are elected and have qualified:

Arnold Steinberg
Michael L. Steinberg
Jeffrey M. Steinberg
Stuart L. Steinberg
Gary M. Pokoik
Harold Derfner
Leon Pokoik

3. Ratification of Actions of Directors and Officers.

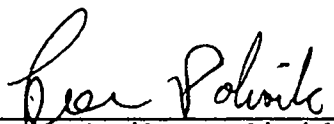
RESOLVED, that all actions and resolutions heretofore taken or made by the Board of Directors of the Corporation are hereby approved, ratified and confirmed and all documents heretofore executed on behalf of the Corporation and all other actions taken on behalf of the

Corporation by an officer of the Corporation are hereby approved, ratified and confirmed.

4. Effective Date.

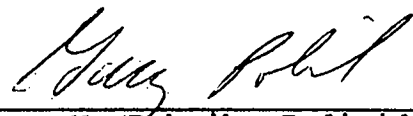
The effective date of the actions and resolutions set forth above shall be as of May 23, 1994.

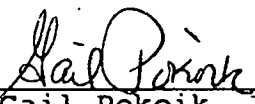
SHAREHOLDERS:


Leon Pokoik, Individually
and as Custodian for
Davin Pokoik and as
Custodian for Alicia
Pokoik

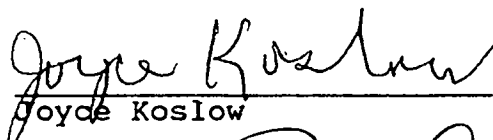

Arnold Steinberg


Stuart Steinberg

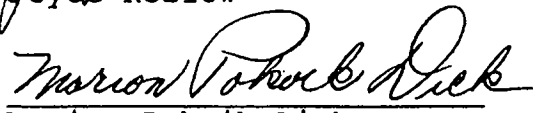

Gary M. Pokoik, Individually
and as Custodian for
Mathew Pokoik and as
Custodian for Jonathan
Pokoik

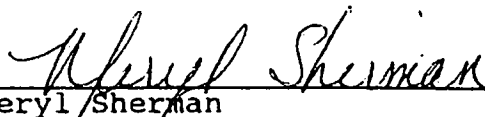

Gail Pokoik, Individually
and as Custodian for
Justine Pokoik

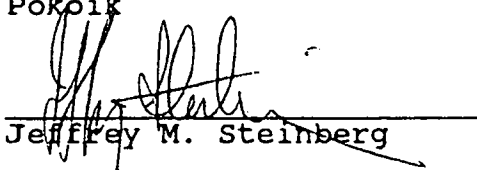

Gladys Benenson

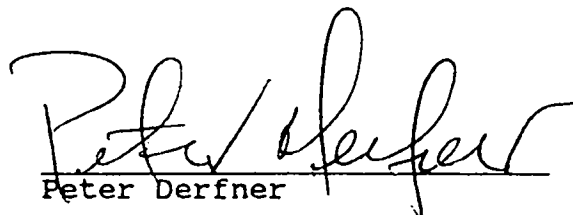

Joyce Koslow


Helen Derfner


Marion Pokoik Dick,
Individually and as
Trustee for Jonathan
Pokoik


Meryl Sherman


Jeffrey M. Steinberg


Peter Derfner

Leslie Crosse
Leslie Crosse

406 Realties, Inc.

By: Michael L. Steinberg
Name:
Title: Vice President

Steinberg & Pokoik, Inc.

By: Michael L. Steinberg
Name:
Title: Vice President

Myron Steinberg
Myron Steinberg

Esperah Realties, Inc.

By: Michael L. Steinberg
Name:
Title: Vice President

120 A.D.3d 1052, 992 N.Y.S.2d 220, 2014 N.Y. Slip Op. 06154
(Cite as: 120 A.D.3d 1052, 992 N.Y.S.2d 220)

C

Supreme Court, Appellate Division, First Department,
New York.

RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH,
et al., Petitioners–Appellants,

v.

The MCGRAW–HILL COMPANIES, INC., Respondent–Respondent.

Sept. 11, 2014.

Background: Shareholders petitioned for discovery of books and records of a corporation's board of directors, seeking information about the board's oversight and management of a wholly-owned subsidiary that had been accused of wrongdoing. The Supreme Court, New York County, Jeffrey K. Oing, J., denied the petition. The shareholders appealed.

Holding: The Supreme Court, Appellate Division, held that the corporation was required to permit inspection of the books and records of its board of directors.

Petition granted, reversed and remanded.

West Headnotes

[1] Corporations and Business Organizations
101 ↪1541(1)

101 Corporations and Business Organizations
101VI Shareholders and Members
101VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1541 Right to Inspection
101k1541(1) k. In general. Most Cited Cases

↪1541(2)

101 Corporations and Business Organizations
101VI Shareholders and Members
101VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1541 Right to Inspection
101k1541(2) k. Proper purposes. Most Cited Cases

Shareholders have both statutory and common-law rights to inspect a corporation's books and records so long as the shareholders seek the inspection in good faith and for a valid purpose, with the statutory right supplementing, but not replacing, the common-law right. McKinney's Business Corporation Law § 624.

[2] Corporations and Business Organizations
101 ↪1542(1)

101 Corporations and Business Organizations
101VI Shareholders and Members
101VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1542 Books and Records Subject to Inspection
101k1542(1) k. In general. Most Cited Cases

A corporation was required to provide shareholders with an opportunity to inspect the books and records of a corporation's board of directors, including materials beyond those specifically delineated by statute, under the common-law right of inspection, where the shareholders, in good faith, requested access to investigate alleged wrongdoing by the board in its supervision of a wholly-owned subsidiary, which would expose the corporation to substantial potential liability. McKinney's Business

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Corporation Law § 624.

[3] Corporations and Business Organizations
101 ↪ 1541(2)

101 Corporations and Business Organizations

101 VI Shareholders and Members

101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members

101k1539 Inspection of Corporate Books and Records

101k1541 Right to Inspection

101k1541(2) k. Proper purposes.

Most Cited Cases

Investigating alleged misconduct by management and obtaining information that may aid legitimate litigation are proper purposes for a shareholder to request access to the books and records of a corporation's board of directors, even if the inspection ultimately establishes that the board had engaged in no wrongdoing. *McKinney's Business Corporation Law § 624.*

*221 *Wolf Popper LLP*, New York (Robert M. Roseman of counsel), for appellants.

Cahill Gordon & Reindel LLP, New York (Brian T. Markley of counsel), for respondent.

SAXE, J.P., MOSKOWITZ, FREEDMAN, GIS-CHE, KAPNICK, JJ.

Order, Supreme Court, New York County (Jeffrey K. Oing, J.), entered May 21, 2013, which denied the petition to inspect respondent's books and records pertaining to the alleged wrongful conduct of its wholly-owned subsidiary, unanimously reversed, on the law, without costs, the petition granted, and the matter remanded for further proceedings consistent herewith concerning the proper scope of inspection.

Petitioners, Retirement Plan for General Employees of the City of North Miami Beach (North

Miami Beach) and Robin Stein, are shareholders of respondent The McGraw-Hill Companies, Inc. (McGraw-Hill). Nonparty Standard & Poor's Financial Services LLC (S&P) is a major credit rating agency wholly owned by McGraw-Hill. S&P issues ratings on securities and other investment products related to those products' default risk; the ratings play a critical role in the economy by driving investment decisions, as many institutional investors have rules that restrict them to investing only in products with high ratings from S&P.

Petitioners allege that under the direction of respondent's chairman and chief executive, S&P undertook a strategy of fraudulently issuing positive ratings on complex financial products such as residential mortgage-backed securities (RMBS), collateralized debt obligations (CDOs), and other similarly packaged mortgage-related products. According to petitioners, this strategy redounded to McGraw-Hill and S&P's benefit because in many instances, debt issuers whose securities S&P rated were also clients of S&P's services. Therefore, petitioners allege, as the complex mortgage-backed securities industry grew, McGraw-Hill's management directed S&P to further provide optimistic credit ratings in an effort to attract more business from the issuers and gain more revenue from those issuers' complex securities. According to petitioners, the mortgage-related securities at the heart of the meltdown would not have been marketed and sold without S&P's high ratings, none of which accurately reflected the securities' actual risk. Petitioners assert that the rosy credit ratings, which S&P knew to be false, encouraged investment in toxic securities, thus helping to trigger the financial crisis of 2008.

Petitioners note that between August 2007 and November 2007, S&P, along with other major credit rating agencies, came under investigation by several state Attorney Generals' offices and by the United States Securities and Exchange Commission (SEC). These state and federal authorities set out to examine the rating agencies' activities in rating

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subprime RMBSs and CDOs. Among the main inquiries of the SEC investigation were whether the credit rating agencies complied with their own policies and procedures for initial ratings, the effectiveness of the agencies' conflict-of-interest procedures, and whether conflicts of interest influenced the agencies' ratings—specifically, *222 whether agencies were influenced by receiving compensation from the very issuers and underwriters whose securities they rated.

After conducting its investigation, the SEC issued its conclusions in a July 2008 report. In that report, the SEC found, without attributing conduct to any particular credit rating agency, that the various agencies did not always disclose relevant ratings criteria and that none of them had specific written procedures for rating RMBSs and CDOs. The SEC report also noted, among other things, that although the agencies were required to maintain and enforce policies and procedures designed to manage conflicts of interest, significant conflicts persisted—for example, the “issuer pays” model for RMBS and CDO offerings.

Similarly, in April 2011, the United States Senate Subcommittee on Investigations issued a report emphasizing credit rating agencies' complicity in the 2008 financial crisis—a crisis partially driven by investments in the subprime mortgage securities market. The Senate subcommittee report concluded that the rating agencies' senior management knew of increasing risks in the mortgage markets, such as lax lending standards, poor quality loans and mortgage fraud. However, the subcommittee stated, instead of using this information to temper their ratings, the agencies continued to issue numerous investment-grade ratings for mortgage-backed securities.

By letter dated November 18, 2011, petitioner North Miami Beach, citing New York Business Corporation Law (BCL) § 624 and the New York common law, made a written demand upon respondent to inspect certain books and records of respondent's board of directors.^{FNI} The demand lis-

ted 15 categories of books and records generally relating to the board of directors' oversight and management of S&P, and also relating to the board's independence. For example, the demand requested records concerning: 1) the board's independence; 2) respondent's policies and procedures regarding the board's oversight of S&P; 3) names of senior employees reporting directly to the board; 4) policies and procedures for issuing credit ratings for RMBSs and CDOs; 5) policies and procedures for addressing and managing conflicts of interest, particularly those arising out of the “issuer pays” model for issuing credit ratings; and 6) the names of respondent's personnel in charge of enforcing a code of business ethics and any other conflict-of-interest policy. North Miami Beach specified the time frame for the production as “January 1, 2002 to the present.”

FNI. Petitioner Robin Stein did not join North Miami Beach in making the demand until June 22, 2012.

Further, North Miami Beach enumerated the purposes for its demand—among others, to investigate potential wrongdoing and mismanagement by the board of directors; to assess the board's ability to consider impartially a demand for action; to assess policies that the board had implemented to address potential conflicts of interest in S&P's RMBS and CDO business; and to assess policies the board had considered or implemented to address S&P's procedures for issuing RMBS and CDO credit ratings.

Before petitioners commenced this action, the parties engaged in a series of discussions to determine whether they could compromise on the scope of petitioners' demand without any court intervention. Respondent offered for production *223 all documents required by BCL § 624—that is, a record of shareholders, shareholder meeting minutes, and profit and loss statements. However, petitioners asserted a demand for additional documents under New York common law, including anything that the board had received or disseminated with respect to

credit ratings for RMBSs and CDOs. Petitioners further demanded, also under New York common law, documents pertaining to respondent's policies and oversight of S&P, among other things. Nevertheless, respondent refused to produce any documents that were not required under BCL § 624, asserting that the request for documents under the New York common law was too broad.

Petitioners alleged that, in later discussions, they made clear that they sought only documents that the board had actually received, prepared, reviewed or distributed, and, of those documents, only the ones concerning the board's knowledge about and oversight of S&P. Thus, petitioners stated, respondent was not obliged to conduct an exhaustive firmwide search for documents, as the requested documents were easily identified and easily obtainable. However, respondent still took the position that petitioners were entitled only to documents required under BCL § 624.

When discussions failed to produce any agreement on further documents to be produced, petitioners filed the petition underlying this appeal. Further, petitioners attached to their memorandum of law a "Schedule A" containing only nine categories of documents and making clear that petitioners sought documents only from board members. Petitioners noted that Schedule A constituted an attempt to narrow their prior demands after the series of discussions with respondent.

Supreme Court denied the petition, finding that petitioners should have first made a demand upon respondent and then, once respondent rejected the demand, should have commenced a shareholders' derivative action rather than filing a petition under BCL § 624. We disagree.

[1] Under New York law, shareholders have both statutory and common-law rights to inspect a corporation's books and records so long as the shareholders seek the inspection in good faith and for a valid purpose (see *Matter of Dwyer v. Di Nardo & Metschl, P.C.*, 41 A.D.3d 1177, 1178, 838

N.Y.S.2d 745 [4th Dept.2007], quoting *Matter of Peterborough Corp. v. Karl Ehmer, Inc.*, 215 A.D.2d 663, 664, 628 N.Y.S.2d 134 [2d Dept.1995]). The statutory right supplemented, but did not replace, the common-law right (see *Matter of Crane Co. v. Anaconda Co.*, 39 N.Y.2d 14, 19–20, 382 N.Y.S.2d 707, 346 N.E.2d 507 [1976]; *Matter of Steinway*, 159 N.Y. 250, 263–265, 53 N.E. 1103 [1899]).

[2] Here, petitioners sufficiently showed that they were acting in good faith and for a proper purpose in seeking to enforce their common-law right to inspect respondent's books and records. Specifically, the petition alleges that petitioners seek to investigate alleged mismanagement and breaches of fiduciary duty by respondent's board of directors in failing to oversee purported wrongdoing by S&P; this alleged wrongdoing, petitioners assert, exposed respondent to substantial potential liability in multiple civil actions and investigations. These allegations form a proper basis for petitioners' request (see *Matter of Crane Co.*, 39 N.Y.2d at 20–21, 382 N.Y.S.2d 707, 346 N.E.2d 507).

[3] Contrary to respondent's contentions, investigating alleged misconduct by management and obtaining information that may aid legitimate litigation are, in fact, proper purposes for a BCL § 624 request, even if the inspection ultimately *224 establishes that the board had engaged in no wrongdoing (see *Matter of Tatko v. Tatko Bros. Slate Co.*, 173 A.D.2d 917, 918, 569 N.Y.S.2d 783 [3d Dept.1991]). Indeed, petitioners identified several reasons for making their demand, including assessment of policies that the board had implemented when issuing credit ratings and investigation of possible wrongdoing by the respondent's board of directors. Each of these purposes adequately justifies petitioners' access to certain board documents. Moreover, because the common-law right of inspection is broader than the statutory right, petitioners are entitled to inspect books and records beyond the specific materials delineated in BCL § 624(b) and (e) (see *Matter of Ochs v. Washington Hgts.*

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Fed. Sav. & Loan Assn., 17 N.Y.2d 82, 86-87, 268 N.Y.S.2d 294, 215 N.E.2d 485 [1966]; *see also Rockwell v. SCM Corp.*, 496 F.Supp. 1123, 1126 [S.D.N.Y.1980]).

Finally, although petitioners substantially limited the scope of their initial requests by submitting their Schedule A, respondent maintains that the items requested in that schedule are still too broad. On this record, we cannot determine which records are relevant and necessary for petitioners' purposes. A hearing is therefore necessary to determine the proper scope of inspection (*see Matter of Liaros v. Ted's Jumbo Red Hots, Inc.*, 96 A.D.3d 1464, 1465, 946 N.Y.S.2d 387 [4th Dept.2012]; *Tatko*, 173 A.D.2d at 919, 569 N.Y.S.2d 783). Accordingly, we remand the matter to Supreme Court for that hearing.

N.Y.A.D. 1 Dept.,2014.

Retirement Plan for General Employees of City of North Miami Beach v. McGraw-Hill Companies, Inc.

120 A.D.3d 1052, 992 N.Y.S.2d 220, 2014 N.Y. Slip Op. 06154

END OF DOCUMENT

133 N.Y.S.2d 469

(Cite as: 133 N.Y.S.2d 469)

H

Supreme Court, New York County, New York,
Special Term, Part X.
Lester MARTIN, Petitioner,
v.
COLUMBIA PICTURES CO., Respondent.

Dec. 3, 1953.

Proceeding in the matter of application of stockholder for an order for inspection of minute book and general books of account of corporation. The Supreme Court at Special Term, Wasservogel, Special Referee, held that in seeking inspection of corporate records, petitioner acted in good faith, in the honest belief that such inspection was necessary in order to protect his substantial investment in corporation and with no objective foreign thereto.

Report of Special Referee confirmed and inspection granted.

Order confirming report and granting inspection affirmed by the Supreme Court, Appellate Division, 283 App.Div. 926, 130 N.Y.S.2d 300.

West Headnotes

[1] Corporations and Business Organizations 101 ↪1541(2)

101 Corporations and Business Organizations
101 VI Shareholders and Members
101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records

101k1541 Right to Inspection
101k1541(2) k. Proper purposes.

Most Cited Cases

(Formerly 101k181(1))

Corporations and Business Organizations 101 ↪1541(3)

101 Corporations and Business Organizations
101 VI Shareholders and Members
101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1541 Right to Inspection
101k1541(3) k. Reasonable time and place. Most Cited Cases
(Formerly 101k181(1))

At common law, a stockholder is entitled to inspect corporate books and records at a proper time and place and for a proper purpose.

[2] Corporations and Business Organizations 101 ↪1542(2)

101 Corporations and Business Organizations
101 VI Shareholders and Members
101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1542 Books and Records Subject to Inspection

101k1542(2) k. List of shareholders. Most Cited Cases
(Formerly 101k181(1))

A stockholder is afforded by statute the right to inspect the stock books of a corporation. Stock Corporation Law, § 10.

[3] Corporations and Business Organizations 101 ↪1548(1)

101 Corporations and Business Organizations
101 VI Shareholders and Members
101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1548 Actions to Enforce Right of Inspection

133 N.Y.S.2d 469

(Cite as: 133 N.Y.S.2d 469)

101k1548(1) k. In general. Most

Cited Cases

(Formerly 101k181(8))

A stockholder is not entitled to inspect books and records of corporation as a matter of right either by virtue of common law or statute, and application for order requiring corporation to permit such inspection may be denied where in the opinion of court, such application is not consonant with ethical principles or rules of law, business of the corporation, or good faith. Stock Corporation Law, § 10.

[4] Corporations and Business Organizations
101 ↪1541(2)

101 Corporations and Business Organizations
 101 VI Shareholders and Members
 101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
 101k1539 Inspection of Corporate Books and Records
 101k1541 Right to Inspection
 101k1541(2) k. Proper purposes.

Most Cited Cases

(Formerly 101k181(1))

"Good faith" of stockholder with reference to inspection of books and records of corporation is an intangible and abstract quality with no technical meaning or statutory definition and it encompasses, among other things, an honest intent and absence of malice or design to defraud or seek an unconscionable advantage.

[5] Corporations and Business Organizations
101 ↪1541(2)

101 Corporations and Business Organizations
 101 VI Shareholders and Members
 101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
 101k1539 Inspection of Corporate Books and Records
 101k1541 Right to Inspection

101k1541(2) k. Proper purposes.

Most Cited Cases

(Formerly 101k181(1))

The personal "good faith" of an individual as respects inspection of corporate books is a concept of his own mind and inner spirit which may not conclusively be determined by his protestations alone, and hence existence of good faith as a substantive fact necessitates an examination and evaluation of external manifestations also.

[6] Corporations and Business Organizations
101 ↪1548(7)

101 Corporations and Business Organizations
 101 VI Shareholders and Members
 101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
 101k1539 Inspection of Corporate Books and Records
 101k1548 Actions to Enforce Right of Inspection
 101k1548(7) k. Evidence. Most
 Cited Cases
 (Formerly 101k181(8))

Good faith of stockholder may be evidenced by facts and surrounding circumstances existing before and after application for order requiring corporation to permit him to inspect books and records, and hence, in order to clearly show the factual situation of the parties as of date of hearing, all matters bearing on the issues may be put in evidence, regardless of whether such evidence was in existence prior to institution of proceeding or became known thereafter. Stock Corporation Law, § 10.

[7] Appeal and Error 30 ↪1212(1)

30 Appeal and Error
 30XVII Determination and Disposition of Cause
 30XVII(F) Mandate and Proceedings in Lower Court
 30k1209 New Trial
 30k1212 Scope of Issues

133 N.Y.S.2d 469

(Cite as: 133 N.Y.S.2d 469)

30k1212(1) k. In general. Most

Cited Cases

Appeal and Error 30 ↪1214

30 Appeal and Error

30XVII Determination and Disposition of Cause

30XVII(F) Mandate and Proceedings in
Lower Court

30k1209 New Trial

30k1214 k. Evidence. Most Cited

Cases

Where Supreme Court at Special Term was directed by order of Appellate Division to take proof as to good faith of petitioner and whether he sought an examination of minute book and general books of account of corporation in order to protect his interests in corporation as a stockholder or for some other purpose, the only material issues before court were whether petitioner honestly believed facts to be as set forth in petition and whether he sought to protect his substantial investment in corporation, and whether such allegations actually indicated mismanagement of business of corporation or whether corporation was in fact being mismanaged was not relevant to issues referred to Special Term.

**[8] Corporations and Business Organizations
101 ↪1541(2)**

101 Corporations and Business Organizations

101 VI Shareholders and Members

101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members

101k1539 Inspection of Corporate Books and Records

101k1541 Right to Inspection

101k1541(2) k. Proper purposes.

Most Cited Cases

(Formerly 101k181(1))

A bona fide claim that corporation is being mismanaged will support an order for inspection of corporate books and records even though such inspection ultimately establishes that in fact there was

no mismanagement.

**[9] Corporations and Business Organizations
101 ↪1548(1)**

101 Corporations and Business Organizations

101 VI Shareholders and Members

101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members

101k1539 Inspection of Corporate Books and Records

101k1548 Actions to Enforce Right of Inspection

101k1548(1) k. In general. Most
Cited Cases

(Formerly 101k181(1))

Purchase by petitioner of additional shares of stock in corporation after commencement of proceeding for an order requiring corporation to permit inspection of its minute book and general books of account did not reflect unfavorably upon petitioner or create a criterion of his good faith in seeking the inspection, and whether petitioner's optimism as to future of motion picture industry, which allegedly prompted purchase of additional stock, was warranted was wholly immaterial.

**[10] Corporations and Business Organizations
101 ↪1541(2)**

101 Corporations and Business Organizations

101 VI Shareholders and Members

101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members

101k1539 Inspection of Corporate Books and Records

101k1541 Right to Inspection

101k1541(2) k. Proper purposes.

Most Cited Cases

(Formerly 101k181(1))

Possible desires of stockholder to become a member of board of directors or obtain control of corporation would not, in and of themselves, constitute such bad faith as would deprive him of relief in

133 N. Y. S. 2d 469
(Cite as: 133 N. Y. S. 2d 469)

proceeding for an order requiring corporation to permit him to inspect minute book and general books of account of corporation.

[11] Corporations and Business Organizations
101 ↪ 1548(7)

101 Corporations and Business Organizations
101 VI Shareholders and Members
101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1548 Actions to Enforce Right of Inspection
101k1548(7) k. Evidence. Most Cited Cases
(Formerly 101k181(8))

Where corporation in affidavit in opposition to petition by stockholder for inspection of corporate records charged petitioner with being a professional stockholder agitator, oral testimony and documentary evidence relating to petitioner's activities in other corporations were admissible.

[12] Corporations and Business Organizations
101 ↪ 1548(7)

101 Corporations and Business Organizations
101 VI Shareholders and Members
101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1548 Actions to Enforce Right of Inspection
101k1548(7) k. Evidence. Most Cited Cases
(Formerly 101k181(8))

In proceeding by stockholder for order requiring corporation to permit petitioner to inspect minute book and general books of account of corporation, evidence as to activities of petitioner with respect to management of affairs of other corpora-

tions in which he owned stock, ultimately resulting in substantial benefit to stockholders established that charge that petitioner was a professional stockholder agitator was unwarranted and without foundation.

[13] Corporations and Business Organizations
101 ↪ 1548(7)

101 Corporations and Business Organizations
101 VI Shareholders and Members
101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1548 Actions to Enforce Right of Inspection
101k1548(7) k. Evidence. Most Cited Cases
(Formerly 101k181(8))

In proceeding by stockholder, owning or controlling a substantial interest in common stock of corporation and in no way connected with any competitor, for an order requiring corporation to permit petitioner to inspect its minute book and general books of account, evidence established that petitioner was not motivated by malice, personal gain, ill will or intent to interfere with or harass officers and directors of corporation and that any benefit resulting from such inspection would protect the interests of all stockholders.

[14] Corporations and Business Organizations
101 ↪ 1548(7)

101 Corporations and Business Organizations
101 VI Shareholders and Members
101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members
101k1539 Inspection of Corporate Books and Records
101k1548 Actions to Enforce Right of Inspection
101k1548(7) k. Evidence. Most Cited Cases

133 N.Y.S.2d 469

(Cite as: 133 N.Y.S.2d 469)

(Formerly 101k181(8))

In proceeding by stockholder for order requiring corporation to permit petitioner, in no way connected with any competitor, to inspect minute book and general books of account of corporation, evidence failed to establish that petitioner would obtain any unconscionable advantage as a result of the relief sought.

[15] Corporations and Business Organizations
101 ↪ 1547

101 Corporations and Business Organizations

101 VI Shareholders and Members

101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members

101k1539 Inspection of Corporate Books and Records

101k1547 k. Furnishing shareholder statement of corporate affairs. Most Cited Cases
 (Formerly 101k181(7))

Owner of a substantial interest in common stock of corporation was not required to blindly accept annual financial report, but he was entitled to know the basis for such report and to inquire and ascertain why expenses had apparently increased at a rate higher than the rise in gross income, why profits had apparently fallen in the face of increased volume of business, and whether affiliated or subsidiary corporations contributed to the assets of parent corporation or were a means of siphoning off profitable operations from parent corporation.

[16] Corporations and Business Organizations
101 ↪ 1548(7)

101 Corporations and Business Organizations

101 VI Shareholders and Members

101 VI(B) Rights and Liabilities as to Corporation and Other Shareholders or Members

101k1539 Inspection of Corporate Books and Records

101k1548 Actions to Enforce Right of Inspection

101k1548(7) k. Evidence. Most

Cited Cases

(Formerly 101k181(8))

In proceeding by stockholder, owning or controlling approximately 8.3 per cent. of outstanding common stock in corporation, for order requiring corporation to permit petitioner to inspect minute book and general books of account, evidence established that in seeking such relief petitioner acted in good faith, in honest belief that such inspection was necessary in order to protect his substantial investment in corporation and with no objective foreign thereto. Stock Corporation Law, § 10.

*472 Heller & Heller, Brooklyn, for petitioner, Louis Heller, Brooklyn, of counsel.

Schwartz & Frohlich, New York City, for respondent, Ferdinand Pecora, New York City, of counsel.

WASSERVOGEL, Special Referee.

By an order of the Appellate Division of the Supreme Court, First Judicial Department, dated June 30, 1953, 282 App.Div. 686, 757, 122 N.Y.S.2d 464, 465, this Court was directed to take proof as to 'the factual disputes relating to the good faith of the petitioner; and as to whether petitioner sought an examination of respondent's minute book and general books of account to protect his interests in the corporation as a stockholder or for some purpose foreign to such objective.'

[1][2][3] It is well settled that at common law a stockholder is entitled to inspect corporate books and records at a proper time and place and for a proper purpose. Matter of Steinway, 159 N.Y. 250, 53 N.E. 1103, 45 L.R.A. 461. In addition to this common law right, a stockholder, in the State of New York, is by statute afforded the right to inspect the stock books of a company. Stock Corporation Law, § 10; *473 Schulman v. Louis Dejonge & Co., 270 App.Div. 147, 149, 59 N.Y.S.2d 119, 121. The courts of this State, however, have narrowed what originally appeared to be an absolute principle and

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have held that neither by virtue of the common law nor by Section 10 of the Stock Corporation Law is an inspection of the books and records of a corporation a matter of right. The courts of this State have determined that such an application may be denied where, in their opinion, the application is not consonant with ethical principles or rules of law, the business of the corporation or good faith. *Durr v. Paragon Trading Corp.*, 270 N.Y. 464, 469, 1 N.E.2d 967, 969; *Baker v. MacFadden Publications, Inc.*, 270 App.Div. 440, 443, 59 N.Y.S.2d 841, 844; 5 *Fletcher's Cyclopedia of Corporations*, Perm. Ed., Sec. 2220, pg. 595-596; 59 A.L.R. 1375 et seq. In view of the limited and narrow scope of the reference to this Court, *supra*, the motive and good faith of petitioner are the sole issues to be resolved in this hearing.

[4][5][6] 'Good faith,' with reference to petitioner's inspection of respondent's books and records, is an intangible and abstract quality with no technical meaning or statutory definition. It encompasses, among other things, an honest intent, the absence of malice, the absence of a design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone. The existence of good faith as a substantive fact, therefore, necessitates an examination and evaluation of external manifestations as well. This may be evidenced by facts and surrounding circumstances existing prior and subsequent to the application for the relief sought in a proceeding of this type. With this in mind, and in order to clearly show the factual situation of the parties as of the date of the hearings, the Court permitted the respective counsel to put in evidence all matters bearing on the issues here involved, whether such evidence was in existence prior to the institution of this proceeding or became known thereafter.

The record establishes that petitioner became a stockholder of the respondent corporation (hereinafter referred to as Columbia) in or about Ju-

ly, 1952. On February 4, 1953, the date of the commencement of this proceeding, petitioner was the owner and holder of 2255 shares of the common stock of Columbia and, in addition thereto, by virtue of the holdings of his wife and a wholly-owned corporation, controlled 8,127 shares of such stock, with a then total market value in excess of \$125,000. As of June 24, 1953, petitioner owned and/or controlled approximately 55,700 shares of the common stock of Columbia at a cost to him of approximately three-quarters of a million dollars, with a total market value in excess of \$830,000. Columbia is authorized to issue one million shares of its common stock and, at the time of the application for *474 the relief sought herein, had issued 670,669 such shares. Thus, petitioner now owns and/or controls approximately 8.3 per cent of Columbia's outstanding common stock, as compared with 36.66 per cent of the issued common stock owned or controlled by the directors of Columbia.

In or about November 1952, petitioner received Columbia's annual financial statement for the fiscal year ending June 30, 1952. Shortly thereafter, he wrote several letters to Columbia wherein he objected to certain proposed stock option purchased plans for employees. He also requested information as to the management's plans, if any, to reduce what he considered to be excessive corporate expenses. On January 13, 1953, petitioner made a formal demand upon Columbia for an inspection of its corporate stock list. This request was refused, but, by order of Mr. Justice Hofstadter, dated January 28, 1953, petitioner was permitted to compile such stock list, which was completed on or about February 2, 1953. Thereafter, an oral demand was made upon Columbia for an inspection of its books and records, which demand, likewise, was refused. Petitioner then moved at Special Term, for a general inspection of the books and records of Columbia and, at the same time, sought an order staying an annual meeting of Columbia's stockholders scheduled for February 9, 1953. The court denied the stay, but subsequently rendered a decision granting petition-

er's request for a general inspection of the corporate books and records. An order to this effect was entered on April 17, 1953. Such order was subsequently modified by an order of the Appellate Division, First Judicial Department, on June 30, 1953, which provided for the instant reference to this Court.

[7][8] In the papers which initiated the present proceeding, petitioner has set forth certain allegations which, in his opinion, tend to establish or indicate mismanagement of the business of Columbia. Whether such allegations actually indicate mismanagement or, for that matter, whether Columbia is in fact being mismanaged is not relevant to the issues referred to this Court. This Court is required to concern itself only with questions of whether petitioner honestly believed the facts to be as set forth in his petition and whether he sought to protect his substantial investment in Columbia. A bona fide claim that a corporation is being mismanaged will support an order for an inspection of corporate books and records even though such inspection ultimately establishes that in fact there was no mismanagement. *Matter of Steinway*, supra; *Durr v. Paragon Trading Corp.*, supra; *Lewis v. Nat Lewis Retail Corp.*, 194 Misc. 427, 86 N.Y.S.2d 823. A stockholder may, in good faith, believe that the profits of a corporation, for some unknown reason, are not properly reflected by its declared dividends or in its published financial statements. While explanations therefor may be adequate and establish fully why the corporate affluence failed to reach its stockholders, such a stockholder, nevertheless, is entitled to know the underlying facts. This information can only be acquired by an examination of the records of *475 the corporation. *Matter of Oltarsh*, N.Y.L.J., May 21, 1946, pg. 2011, Supreme Court, New York County, Special Term, Part I, Hofstadter, J. Thus, contrary to respondent's contention and, as heretofore noted, particularly in view of the limited issues before this Court, the mere fact that petitioner has not affirmatively established that the corporation is being mismanaged is insufficient basis for disputing his good faith. It should be

noted, however, that if petitioner were able to establish actual mismanagement of the affairs of the corporation, the entire problem before this Court would be academic.

[9] Likewise, contrary to Columbia's contention, the purchase by petitioner of additional shares of stock after the commencement of this proceeding does not reflect unfavorably upon him nor does it create a criterion of his good faith in seeking the inspection. As noted in the record, the basic reason for petitioner's increase of his investment in Columbia was that its stock, at the time of his purchases, was selling at a price substantially below its book value. There is no merit to the claim that petitioner's assertions of mismanagement and inefficiency on the part of the corporation's present management are inconsistent with his continued purchases of Columbia's securities. Petitioner's testimony establishes that such purchases were made because of his confidence in the inherent value of the corporate stock and his optimistic view of the future of the motion picture industry. Despite the fact that Columbia's executives apparently do not share petitioner's expressed optimism, whether such optimism, in fact, is warranted is wholly immaterial here.

[10] Columbia, in attacking petitioner's good faith in seeking the inspection of its books and records has placed great emphasis upon statements made by an associate of petitioner's counsel to the effect that, in his belief, petitioner is seeking to gain control of the corporation. Petitioner, under oath, has categorically denied any such intent or desire. It is significant to note that he rejected a plan suggested to him by a vice-president of Columbia whereby he might gain control of the corporation. His testimony to this effect remains uncontroverted. It further appears that petitioner urged the management of Columbia to purchase additional shares of its stock in the open market. The fact that the management of Columbia rejected petitioner's suggestion relating to such purchase of stock as impractical is no basis for an assumption by the Court that he

was insincere in making such proposal. Although Columbia may differ as to the wisdom of this suggestion, it cannot be denied that the result of such plan, if effectuated, would have been the vesting of positive control of the affairs of the corporation in its present officers and directors. Thus Columbia's contention that petitioner seeks its control seems contradicted by the very proposal made by petitioner to which Columbia took exception. Even if Columbia's assertion were correct, *476 the possible desire of petitioner to acquire a place upon the board of directors or to obtain control of the corporation, in and of themselves, do not constitute bad faith so as to deprive him of the relief he seeks herein.

[11][12] In its affidavit in opposition to petitioner's motion for an inspection of its corporation records, Columbia charged petitioner with being a 'professional stockholder agitator.' In view of such claim, it became necessary for this Court to permit counsel for both parties to burden the record with oral testimony and documentary evidence relating to petitioner's activities in other corporations, particularly Phillips-Jones Corporation, Bates Manufacturing Company and New England Public Service Corporation. As to the last named corporation, the record shows that petitioner became a stockholder thereof in 1941 and served for eight years on a stockholders' committee without compensation or fee. The record further shows with respect to such corporation that petitioner objected to its management's plan to sell certain industrial properties at a specified price and that he was instrumental in obtaining a new offer for such properties, which ultimately resulted in additional benefit to the corporation of \$1,500,000. It also appears that other efforts made by petitioner were of substantial benefit to the stockholders of New England Public Service Corporation. In the opinion of the Court, therefore, such activities may not be classed as unwarranted 'stockholder agitation.'

As to petitioner's activities in Phillips-Jones Corporation, it is sufficient to note that they have

received judicial approval. *Martin Foundation, Inc., v. Phillips-Jones Corporation*, Sup. Court, Kings County, 204 Misc. 120, 123 N.Y.S.2d 222, Steinbrink, Official Referee.

With respect to Bates Manufacturing Company, there is nothing in the record which warrants the conclusion that petitioner's dealings with this company were motivated solely for his own personal benefit or gain. On the contrary, it appears that as a result of objections raised in behalf of petitioner, Bates Manufacturing Company caused its by-laws to be amended in a manner which afforded greater protection to all of its stockholders.

As above noted, petitioner has invested approximately three-quarters of a million dollars in Columbia. If, in fact, he were a professional stockholder agitator, he could have carried on such purported activities with his original purchase of comparatively few shares of stock. It does not seem credulous, as contended by Columbia, that petitioner would jeopardize so substantial an investment merely for the purpose of harassing its management or interfering with its business operations. It necessarily follows that any course of conduct by petitioner which is *477 detrimental to Columbia must adversely affect his own holdings therein. Giving due consideration to the foregoing, I am of the opinion that Columbia's assertion that petitioner is a professional stockholder agitator is unwarranted and without foundation.

[13][14][15] Upon the evidence before me, therefore, I find that petitioner is not motivated by malice, personal gain, ill will or an intent to interfere with or harass the officers and directors of Columbia. It has been established that petitioner is principally engaged in the textile industry. He is in no way connected with any competitor of Columbia, so that nothing revealed by an inspection of its books and records could be used by him in competitive activity. Columbia has failed to establish that petitioner would obtain any unconscionable advantage as a result of the relief he seeks herein. Any benefits which might result from the

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inspection of the books and records would protect and aid not only petitioner's stock interest but the interest of all stockholders of Columbia, including that of the management itself. In seeking the inspection, petitioner, in the opinion of the Court, is not without the bounds of prudent and reasonable investment practice. As a substantial investor in Columbia, petitioner need not blindly accept the figures contained in its annual financial report. As a stockholder, he is entitled to know the basis for the amounts set forth therein. He is entitled to inquire and ascertain why expenses have apparently risen on a percentage higher than the rise in gross income. He is entitled to inquire and ascertain why profits have apparently fallen in the face of an increased volume of business. He is entitled to know whether affiliated or subsidiary companies contribute to the assets of Columbia or are a means of siphoning off profitable operations from the parent corporation.

[16] Inasmuch as an inspection of the corporate books and records is the only means by which petitioner can be advised of such matters, I find that in seeking such relief petitioner has acted in good faith, in the honest belief that such inspection is necessary in order to protect his substantial investment in Columbia and with no objective foreign thereto.

N. Y. SUP. 1953

Martin v. Columbia Pictures Co.

133 N.Y.S.2d 469

END OF DOCUMENT

AFFIDAVIT OF SERVICE

INDEX #: 101239-14
DATE FILED: 10/27/2014
RETURN DATE: 12/5/14 @ 9:30AM
ATTORNEY: THE LAW FIRM OF GARY N. WEINTRAUB, LLP
50 ELM STREET HUNTINGTON NY 11743 (631)421-2500

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

IN THE MATTER OF THE APPLICATION OF LEON POKOIK,
INDIVIDUALLY AND AS A PARTNER OF LEON POKOIK
FAMILY PARTNERS, L.P. AND LEON POKOIK FAMILY
PARTNERS, LP. FOR A JUDGMENT PURSUANT TO
~~Plaintiff(s)~~ Petitioner(s)

~~against~~
ARTICLE 78 OF THE CIVIL PRACTICE AND RULES,
-AGAINST-

575 REALTIES, INC. AND
STEINBERG & POKOIK MANAGEMENT CORP.,
~~Defendant(s)~~ Respondent(s)

STATE OF NEW YORK:
COUNTY OF ALBANY: ss:

THOMAS ROSEN, BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION AND IS OVER THE AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.


That on 11/03/2014, 04:16PM at 99 WASHINGTON AVENUE, 6TH FLOOR, ALBANY NY 12231, deponent served the within NOTICE OF PETITION & VERIFIED PETITION, THE PAPERS UPON WHICH IT IS BASED AND RJI on 575 REALTIES, INC.; a respondent in the above entitled action.

Deponent served SUE ZOUKY, an employee with the NEW YORK Secretary of State, with 2 copies of the above described papers and a fee of \$40.00, pursuant to New York section 306 of the B.C.L..

DEPONENT DESCRIBES THE INDIVIDUAL SERVED AS FOLLOWS:
Sex F Approximate age 51 Approximate height 5'05" Approximate weight 140 Color of skin WHITE Color of hair BLONDE

Sworn to before me on 11/03/2014
LAURA VELLA NO. 01VE6270563
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES OCTOBER 22, 2016



X 
THOMAS ROSEN

AFFIDAVIT OF SERVICE

INDEX #: 101239-14
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RETURN DATE: 12/5/14 @ 9:30AM
ATTORNEY: THE LAW FIRM OF GARY N. WEINTRAUB, LLP
50 ELM STREET HUNTINGTON NY 11743 (631)421-2500

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INDIVIDUALLY AND AS A PARTNER OF LEON POKOIK
FAMILY PARTNERS, L.P. AND LEON POKOIK FAMILY
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~~Plaintiff(s)~~ Petitioner(s)

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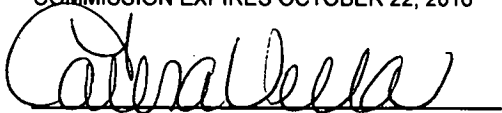
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Sex F Approximate age 51 Approximate height 5'05" Approximate weight 140 Color of skin WHITE Color of hair BLONDE

Sworn to before me on 11/03/2014
LAURA VELLA NO. 01VE6270563
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES OCTOBER 22, 2016




THOMAS ROSEN

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the Application of

Index No.

Leon Pokoik, individually and as a partner of
Leon Pokoik Family Partners, LP, and Leon
Pokoik Family Partners, LP,

Petitioners,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

- against -

575 Realties, Inc. and
Steinberg & Pokoik Management Corp.,

Respondents.

**NOTICE OF PETITION, VERIFIED PETITION,
AFFIDAVIT, AFFIRMATION, EXHIBITS**

FILED

The Law Firm of
GARY N. WEINTRAUB, LLP

JUL 10 2015 Attorneys for Petitioners

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50 Elm Street

Brooklyn, New York 11243

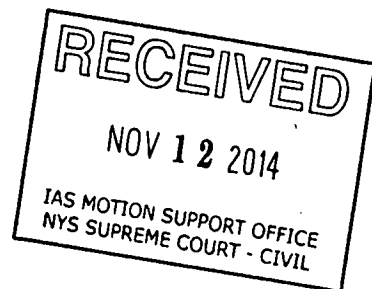
(631) 421-2500

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