

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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OLEG VERKHOGLYAD, and  
ALLIANCE REFRIGERATION INC.

Plaintiff,

Civil Action No.:

--against--

**SUMMONS**

SERGEY BENIMOVICH, BENIM MECHANICAL LLC,  
AND NORTH AMERICAN AIR INC.

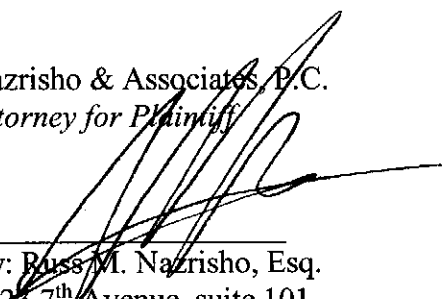
Defendants.  
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**TO THE ABOVE NAMED DEFENDANTS**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on plaintiffs on plaintiff's attorneys within 20 days after the service of the summons, exclusive of the day of service (or within 30 days after the service is commenced if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default or the relief demanded in the complaint.

Dated: Kings, New York  
March 28, 2017

Nazrisho & Associates, P.C.  
*Attorney for Plaintiff*

  
By: Russ M. Nazrisho, Esq.  
8025 7<sup>th</sup> Avenue, suite 101  
Brooklyn, NY 11103  
Tel.: (718)759-9777

**DEFENDANT'S ADDRESS:**

SERGEY BENIMOVICH – 119 Oceanside Avenue, Unit 201, Staten Island, NY 10305  
BENIM MECHANICAL LLC – 178 Bionia Avenue, Unit 201, Staten Island, NY 10305  
AND NORTH AMERICAN AIR INC. - 178 Bionia Avenue, Unit 201, Staten Island, NY 10305

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COUNTY OF KINGS

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OLEG VERKHOGLYAD, and  
ALLIANCE REFRIGERATION INC.

Plaintiff,

Civil Action No.:

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**VERIFIED COMPLAINT**

SERGEY BENIMOVICH, BENIM MECHANICAL LLC,  
AND NORTH AMERICAN AIR INC.

Defendants.

-----X

Plaintiffs, Oleg Verkhoglyad (“Oleg”) and Alliance Refrigeration, Inc.

(“Alliance”), (hereinafter collectively referred to as “Plaintiffs”), by and through their attorneys of record, **NAZRISHO & ASSOCIATES, P.C.**, complain against Defendants Sergey Benimovich, Benim Mechanical LLC and North American Air, Inc. (collectively “Defendants”), alleging as follows:

**JURISDICTION AND VENUE**

1. This is a civil action against Defendants for breach of contract, misappropriation and judicial dissolution.
2. Venue is proper in this Court, in that the claims arise in the State of New York, the Defendants may be found and transact business in Kings County. Defendants are subject to the general and specific personal jurisdiction of this Court because of their contacts with the State of New York.
3. This Court has personal jurisdiction of Defendants. Among other things,

Defendants are residents of the State of New York, Defendants have engaged in continuous and systematic business in New York and, upon information and belief, derive substantial revenues from commercial activities in New York. Further, Defendants have their executive offices in this district and many of the events giving rise to Plaintiffs' claims occurred within this district.

### **PARTIES**

4. Plaintiff OLEG is an individual and a resident of the State of New Jersey with an address at 48 Westgate Drive, Edison, NJ 08820.

5. Plaintiff ALLIANCE is a corporation incorporated and existing under the laws of New Jersey, with its principal place of business located at 20 Emerald Drive, Morganville, NJ 07751.

6. Defendant SERGEY BENIMOVICH ("SERGEY") is an individual and a resident of the State of New York with an address at 119 Oceanside Avenue, Unit 201, Staten Island, NY 10305.

7. Defendant BENIM MECHANICAL, LLC ("BENIM") is a limited liability company existing under the laws of New Jersey, authorized to do business in the State of New York as a foreign company with its principal place of business located at 178 Bionia Avenue, Unit 201, Staten Island, NY 10305.

8. Defendant NORTH AMERICAN AIR, INC. ("NORTH AMERICAN") is a corporation incorporated and existing under the laws of New York, with its principal place of business located at 178 Bionia Avenue, Unit 201, Staten Island, NY 10305.

**FACTS COMMON TO ALL CLAIMS FOR RELIEF**

9. Upon information and belief, BENIM was formed on or about May 7, 2010 under the laws of the State of New Jersey. BENIM is engaged in the business of providing installation and maintenance services of HVAC systems, primarily in the New York City area.

10. Upon information and belief, Defendant SERGEY was the founder of BENIM.

11. On or about January 17, 2014 BENIM was given authority by the New York Department of State to do business in the State of New York as a foreign limited liability company.

12. On or about February 1, 2014, Plaintiff OLEG and Defendant SERGEY, as members of BENIM executed an operating agreement (hereinafter referred to as the "Operating Agreement"), pursuant to which both members had equal membership interest in the company. A copy of the Operating Agreement is annexed hereto as **EXHIBIT "A"**. Further, pursuant to the Operating Agreement, both members were designated as managers of BENIM.

13. Upon information and belief, both Defendant SERGEY and Plaintiff OLEG each currently owns 50% membership interest in BENIM.

14. During the operation of BENIM's business in 2014 and beginning of 2015, OLEG learned that SERGEY used BENIM's assets for his personal gains by, inter alia, using BENIM's bank account to pay for his personal expenses. SERGEY continued to mismanage, waste and misappropriate BENIM's assets to the detriment of OLEG, even after he was confronted by OLEG.

15. Furthermore, SERGEY intentionally failed to report OLEG as part owner of BENIM, when he filed income tax returns on behalf of BENIM for tax year 2014.

16. On or about September 13, 2015, OLEG and SERGEY, childhood friends and business partners, had a meeting in an attempt to resolve OLEG's complaints about SERGEY's mismanagement of BENIM. The parties agreed that due to the deadlock situation, BENIM should be dissolved (the "September Agreement"). Pursuant to the September Agreement the two members divided the assets, including BENIM's customer list. Further, the parties agreed to complete all outstanding jobs of BENIM, collect BENIM's account receivables and pay off the company's debt, which at the time was approximately one hundred forty thousand (\$140,000.00) Dollars.

17. Subsequently, the parties through their respective companies<sup>1</sup> continued to service BENIM's existing customers. Since then, payments for services rendered by NORTH AMERICAN and ALLIANCE on behalf of BENIM have been deposited into BENIM's operating account.

18. However, contrary to the terms of the September Agreement, and without the consent of OLEG, SERGEY continued to withdraw funds from BENIM's bank account for his personal gain and/or for the benefit of NORTH AMERICAN.

19. At this stage, it is not reasonably practicable for BENIM to continue to carry on its business, as the managers agreed to dissolve the company. BENIM currently has no employees, nor does it have any proposed contracts for services. BENIM has stopped providing services to its customers. BENIM, as an entity, has been unable to pursue any business activities or continue existing business.

20. BENIM is failing financially as SERGEY continues to divert the

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<sup>1</sup> OLEG formed Alliance Refrigeration Inc. and SERGEY formed North American Air, Inc.

company's assets, such as motor vehicles, and continues to misappropriate the company's cash assets. BENIM has been destroyed as a functioning business entity.

**FIRST CAUSE OF ACTION**  
**(Breach of Fiduciary Duty)**

21. Plaintiffs incorporate here by reference the allegations in paragraphs 1 through 21 above.

22. During the relevant period, SERGEY and OLEG, as the only members and managers of BENIM had a fiduciary relationship.

23. As his childhood friend and business partner, OLEG placed trust and confidence in SERGEY.

24. As manager of BENIM, SERGEY owed a fiduciary duty to OLEG.

25. SERGEY breached such duty by misappropriating cash assets of BENIM and using BENIM's funds for his personal benefit without consent of OLEG. Furthermore, SERGEY violated OLEG's trust and acted in bad faith by diverting BENIM's resources to himself and NORTH AMERICAN, an entity entirely owned by SERGEY.

26. SERGEY breached his fiduciary duty by filing false income tax returns on behalf of BENIM, by reporting to the Internal Revenue Service inaccurate information concerning BENIM's tax status as a sole proprietorship, when in fact the company should be treated as a partnership, by failing to report OLEG's involvement in the company as a member and co-owner.

27. By reason of the foregoing, OLEG sustained monetary damages in an amount not yet ascertained.

**SECOND CAUSE OF ACTION**  
**(Aiding and Abetting)**

28. Plaintiffs incorporate here by reference the allegations in paragraphs 1 through 28 above.

29. NORTH AMERICAN was formed by SERGEY specifically with the purpose of facilitating SERGEY's plot to misappropriate the business opportunities of BENIM. SERGEY misappropriated BENIM's business, equipment and cash assets through NORTH AMERICAN.

30. By reason of the foregoing, Defendant NORTH AMERICAN aided and abetted SERGEY in misappropriating the business of BENIM.

31. By reason of the foregoing, OLEG sustained monetary damages in an amount not yet ascertained.

**THIRD CAUSE OF ACTION**  
**(Misappropriation)**

32. Plaintiffs incorporate here by reference the allegations in paragraphs 1 through 32 above.

33. Since 2014, SERGEY used BENIM's assets for his personal gains by using BENIM's bank account to pay for his personal expenses. Even post September Agreement SERGEY continued to withdraw funds from BENIM's bank account for his personal use and for the benefit of NORTH AMERICAN.

34. SERGEY was a fiduciary of BENIM. He misappropriated the assets of BENIM and diverted business opportunities of BENIM toward NORTH AMERICAN.

35. By reason of the foregoing, OLEG sustained monetary damages in an amount not yet ascertained.

**FOURTH CAUSE OF ACTION**  
**(Intentional Interference with Prospective Business Relations)**

36. Plaintiffs incorporate here by reference the allegations in paragraphs 1 through 36 above.

37. Plaintiffs are in the business of providing air conditioning installation and maintenance services to customers primarily in the New York area.

38. Following the September Agreement, SERGEY and NORTH AMERICAN have intentionally interfered with Plaintiffs' ongoing and potential business relationships by contacting Plaintiffs' customers and misinforming them about BENIM's situation. SERGEY and NORTH AMERICAN have made baseless allegations to the customers of ALLIANCE that OLEG is a criminal and should not be dealt with.

39. The aforesaid actions have been taken with the intention of disrupting Plaintiffs' sales, confusing and thwarting customers as they look to make contact with Plaintiffs.

40. By reason of the forgoing, Plaintiffs have no adequate remedy at law and continue to suffer irreparable harm and danger as a result of the acts of Defendants SERGEY and NORTH AMERICAN and have suffered financial injury in an amount not yet ascertained.

**FIFTH CAUSE OF ACTION**  
**(Dissolution NJ Rev Stat § 42:2C-48)**

41. Plaintiffs incorporate here by reference the allegations in paragraphs 1 through 41 above.

42. By reason of the foregoing, it is not reasonably practicable for BENIM to



continue to carry on its business, as the managers agreed to dissolve the company. BENIM, as an entity, has been unable to pursue any business activities or continue existing business.

43. BENIM is failing financially as SERGEY continues to misappropriate the company's cash assets. BENIM has been destroyed as a functioning business entity.

44. By reason of the foregoing, BENIM MECHANICAL, LLC should be dissolved and its activities should be wound up.

45. By reason of the foregoing, OLEG is entitled to the appointment of a receiver upon his application for same.

**SIXTH CAUSE OF ACTION**  
**(Unjust Enrichment)**

46. Plaintiffs incorporate here by reference the allegations in paragraphs 1 through 46 above.

47. Based on the foregoing facts, specifically by diverting BENIM's assets to himself and his newly formed corporation NORTH AMERICAN, SERGEY unjustly benefited at the Plaintiffs' expense.

48. By reason of the foregoing, Plaintiffs have no adequate remedy at law and continue to suffer irreparable harm and danger as a result of the acts of Defendants SERGEY and NORTH AMERICAN and have suffered financial injury in an amount not yet ascertained.

**WHEREFORE**, the Plaintiffs request that:

(A) Judgment be entered in their favor and against Defendants SERGEY

BENIMOVICH, BENIM MECHANICAL LLC, AND NORTH AMERICAN AIR INC. in an amount to be determined by the trier of fact and within the jurisdictional limits of this Court, together with interest and costs of this action and all other relief to which it may be entitled at law or in equity;

Further that:

(B) Defendants SERGEY BENIMOVICH and NORTH AMERICAN AIR INC. pay the Plaintiffs a sum yet to be determined as compensation for the damages sustained by reason of their interference with Plaintiffs' customers, potential customers, and businesses; and that

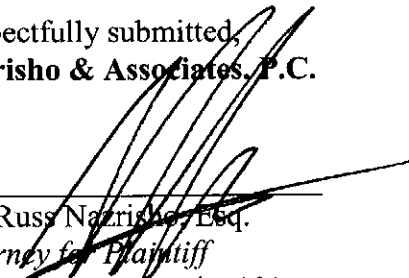
(C) Judgment be entered dissolving BENIM MECHANICAL LLC; or in the alternative, directing Defendant SERGEY BENIMOVICH to buy out Plaintiff's interest in the company;

(D) Plaintiffs have such other, further or different relief which to this Court, in the sound exercise of its discretion and in applying the principles of equity, deems just and proper in the premises.

(E) Plaintiffs demand a jury trial on all matters subject to the right to trial by jury.

Dated: March 28, 2017  
Brooklyn, New York

Respectfully submitted,  
**Nazrisho & Associates, P.C.**

  
By: Russ Nazrisho, Esq.  
*Attorney for Plaintiff*  
8023 7<sup>th</sup> Avenue, suite 101  
Brooklyn, New York 11228  
Tel: (718) 759-9777

**VERIFICATION**

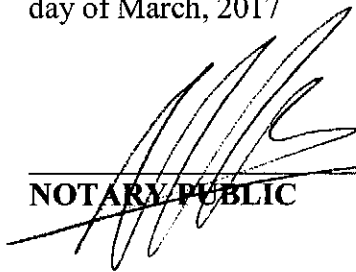
STATE OF NEW YORK            )  
  ): ss:  
COUNTY OF KINGS            )

OLEG VERKHOGLYAD, being duly sworn, states:

I am the plaintiff herein. I have read the foregoing Summons and Complaint and know the contents thereof, and the same is true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and so to those matters deponent believes them to be true.

  
OLEG VERKHOGLYAD

Sworn to me this 27<sup>th</sup>  
day of March, 2017

  
NOTARY PUBLIC

**Russ M. Nazrisho**  
Notary Public State of New York  
No.: 02NA6126267  
Qualified in Kings County  
Commission Expires May 2, 2017