

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

In the Matter of the Application of

JAMES E. CAYNE,

Petitioner,

-against-

510 PARK AVENUE CORPORATION,

Respondent.

Index No.

**PETITION**

Petitioner James E. Cayne (“Mr. Cayne” or “Petitioner”), for his application, by and through his attorneys, Kasowitz Benson Torres LLP, brings this application pursuant to Bus. Corp. Law § 624, and New York common law for an order enforcing Petitioner’s rights as a shareholder to inspect certain requested books and records of Respondent 510 Park Avenue Corporation (the “Corporation”), and alleges, on personal knowledge, as to his own actions and upon information and belief as to the actions of others, as follows:

**NATURE OF THE ACTION**

1. This action arises out of the blatant violations of Petitioner James E. Cayne’s shareholder rights by the Corporation and the Corporation’s refusal to comply with his demand for an inspection of its books and records. Pursuant to Section 624 of New York Business Corporation Law and the common law of the state of New York, Mr. Cayne is entitled to inspect the books and records of the Corporation. The Corporation’s refusal to allow Mr. Cayne’s inspection is yet another example of biased and self-interested actions taken by the Corporation’s board of directors (the “Board”). The Board’s actions -- and its utter and complete failure to provide any explanation whatsoever for those actions -- have left Mr. Cayne with no means of

determining whether the Board has acted properly in its management of the Corporation and for the benefit of its shareholders other than a demand for inspection of the Corporation's books and records.

2. Mr. Cayne seeks inspection of the Corporation's books and records concerning the policies and decision-making procedures of the Board, including, without limitation, documentation relating primarily to the sale and rental of units at 510 Park Avenue, a residential cooperative. Mr. Cayne initially demanded the inspection of these books and records in his July 2, 2019, demand letter (the "Demand"). A true and correct copy of the Demand is annexed hereto as **Exhibit A**.

3. The Demand was prompted by the summary rejections of three prospective purchasers of Mr. Cayne's unit at 510 Park -- rejections that are the result of animus and self-interest on the part of the Board due to prior conflicts between Mr. Cayne and various members of the Board. The Demand likewise is predicated on the Board's refusal to permit him to rent his unit -- a refusal that is inconsistent with the Board's approval of similar requests to rent units made by other shareholders, including members of Board itself. The Board's refusals and decision-making have deprived Mr. Cayne of the entire value of his shares in the Corporation.

4. The Demand is the only means by which he will gain an understanding of the basis on which the Board rejected the three potential purchasers, and his request to rent his unit, and be able to ascertain whether such rejections were made with a good faith basis, in the interests of all shareholders, and are otherwise proper and lawful.

5. In short, absent access to the demanded books and records, Mr. Cayne will be unable to ascertain whether the Board has engaged in any wrongdoing, mismanagement, or breach of its fiduciary duties in connection with the proposed purchase and sale of units at 510

Park Avenue, including, without limitation, whether the board has acted in bad faith, out of self-interest, or without regard for the best interests of the Corporation and its shareholders.

### **PARTIES**

6. Petitioner James E. Cayne is a resident of the State of New Jersey. Mr. Cayne has been a shareholder of 510 Park Avenue Corporation since 1981.

7. Respondent 510 Park Avenue Corporation is a residential cooperative corporation incorporated under the laws of the State of New York. The Corporation has its principal place of business at 770 Lexington Avenue, New York, New York 10065 (the offices of management company Brown Harris Stevens Residential Management, LLC).

### **JURISDICTION AND VENUE**

8. This Court has personal jurisdiction over the Respondent and this proceeding pursuant to CPLR 301 and Bus. Corp. Law § 624 because the Respondent maintains offices in the State and County of New York. Venue is similarly proper pursuant to CPLR 503.

### **FACTUAL ALLEGATIONS**

#### **I. BACKGROUND**

9. James E. Cayne has been a shareholder of the Corporation since 1981 when he, with his wife, Dr. Patricia Cayne, (collectively, the “Caynes”) purchased the shares associated with Unit 6A at 510 Park Avenue and entered into a proprietary lease with the Corporation. In 1999, the Caynes also purchased an additional room, a “maid’s room,” in the building at auction.

10. For over ten years prior to 1999, the Caynes rented the maid’s room from the Corporation. By 1999, however, the Board decided that the maid’s room should be sold, rather than rented.

11. On April 29, 1999, the Board provided notice of the auction to sell two maid’s rooms (including the room the Caynes had rented), which it scheduled for May 14, 1999. The

notice provided that the sale was to be conducted by sealed bid as opposed to a live auction. The Board did not inform shareholders whether bids needed to be in cash or of any other bid requirements. Proceeding with a sealed bid as opposed to a live auction advantaged members of the Board over other shareholders, as only Board members knew the bid requirements. The Board members also knew the appraised value of the maid's rooms – information that no other shareholders possessed.

12. When the Caynes sought more information about the auction from the Board, the Board refused to respond. In order to postpone the auction, the Caynes filed an emergency petition with this Court, seeking injunctive relief. *See Cayne v. 510 Park Ave. Corp.*, Index No. 110067/1999 (Sup. Ct. N.Y. Cnty. May 13, 1999). A true and correct copy of the Cayne's Verified Complaint in the 1999 proceeding is annexed hereto as **Exhibit B**.

13. As a result, the Board was forced to hold a live auction for the sale of the maid's rooms. At the auction, a bidding war ensued between the Caynes and a member of the Board, Mr. Lawrence Friedland. Ultimately, the Caynes were able to purchase one of the maid's rooms for \$75,000, and Friedland purchased the second available maid's room. However, because of the bidding war, Friedland was forced to pay \$75,000 to purchase the second maid's room, far more than he otherwise would have had to pay if the auction had not been public.

14. Since that time, Friedland -- who today is the President of the Board -- has been on bad terms with the Caynes. Friedland's personal animus against the Caynes has resulted in the Board repeatedly using its decision-making authority to harm the Caynes, and in a manner that is wholly inconsistent with its decisions concerning similar issues raised by other shareholders.

## **II. THE BOARD REJECTS QUALIFIED PURCHASERS OF PETITIONER'S UNIT.**

15. In 2013, after the Caynes had moved out of Unit 6A, they listed the unit and the maid's room for sale. They initially priced the unit at approximately \$15 million, but, by 2016, in response to a lack of interest in the market, they lowered the sale price to approximately \$10 million.

16. In March 2016, a prospective purchaser made an offer of \$9 million and submitted an application to the Board. At that time, the Caynes' broker, Douglas Elliman, which had assisted the prospective purchaser in preparing the application, expressed confidence that the prospective purchaser satisfied the requirements for Board approval and would be approved by the Board. The application, however, was rejected by the Board, without any explanation for the decision.

17. Worse yet, the Board failed to inform the Caynes or the potential purchaser of the rejection until after they made repeated inquiries. Notwithstanding the Board's summary rejection of the prospective purchaser's application, the Caynes believe that the prospective purchaser satisfied all requirements for approval.

18. In May 2016, another prospective purchaser made an offer of \$8.7 million for Unit 6A. Although the Caynes' broker was again confident that the Board would approve this offer, it was similarly rejected, with the Board providing the Caynes with absolutely zero explanation whatsoever. Notwithstanding the Board's summary rejection of the second prospective purchaser's application, the Caynes believe that the second prospective purchaser also satisfied all requirements for approval.

19. Inexplicably, at approximately the same time that the Board rejected the \$9 million and \$8.7 million offers on the Caynes' unit, the Board, according to publicly available

information, approved the sale of a nearly identical (if not more attractive and more recently updated) unit on an adjacent floor to the Caynes' unit for \$8.75 million. There is absolutely no explanation for the Board's disparate treatment of seemingly identical offers.

20. The Caynes believe that, over the last three years, as the Board repeatedly rejected qualified prospective purchasers, other prospective purchasers and real estate professionals became aware of the Board's rejections, and, as a result, the value of the unit decreased precipitously.

21. In May 2019, a third prospective purchaser emerged. The purchaser initially offered \$6 million for the unit but increased its offer to \$6.75 million after the Board rejected the initial offer. At that time, the Caynes' broker, which had assisted the prospective purchaser in preparing the application, expressed confidence that the prospective purchaser satisfied the requirements for Board approval and would be approved by the Board. The purchaser also agreed to put three years of maintenance payments in escrow, an extraordinary commitment that goes far beyond what is typically required for co-op board approval in New York. As with the prior potential purchasers, the Caynes believe that the prospective purchaser satisfied all requirements for approval.

22. On May 3, 2019, the day after the Board received the increased offer, the Caynes contacted the Board to express their hope that the Board would approve this purchaser, particularly in light of the financial hardship that had resulted due to their inability to sell the unit.

23. Notwithstanding the increased offer, the strong recommendations, and the creditworthiness of the prospective purchaser, the Board inexplicably once again refused to agree to the sale.

24. On June 4, 2019, the Board sent the Caynes a letter stating that the Board had “unanimously determined not to consent to the second offer made” by the third prospective purchaser. The Board provided absolutely no explanation for its decision. A true and correct copy of the Board’s letter is annexed hereto as **Exhibit C**.

25. As a result of the Caynes’ inability to sell their unit, they have suffered significant financial loss and have been deprived of virtually all of the value of their unit. At present, they have not lived in the unit for approximately six years but continue to pay over \$9,000 per month in maintenance fees.

26. In total, the Caynes have paid over \$700,000 in maintenance, special assessments, and other costs since they moved out of the unit.

### **III. THE BOARD REFUSES TO ALLOW THE CAYNES TO RENT THEIR UNIT TO QUALIFIED TENANTS.**

27. Unable to sell their unit, the Caynes also have sought to rent it in order to recoup some of their losses. Prior to 2016, they identified a tenant who was interested in renting their unit, whom Mr. Cayne knew from their work together in the financial services industry.

28. The Caynes requested permission to rent the unit, but the Board informed them that the building did not allow shareholders to rent their units. The Board did so notwithstanding that the Caynes’ proprietary lease included provisions allowing for the subleasing of units. The Caynes were never given any additional explanation for the Board’s refusal to allow them to rent their unit.

29. After the Board’s refusal, the Caynes learned that the Board had allowed shareholders to rent their units on at least two occasions. First, they learned from a former tenant that he had rented a unit at 510 Park from approximately 1998 through 2001. They also learned that the Board had given permission for Friedland’s daughter to rent a unit in the building.

30. The Caynes are aware of, and have been provided with, no explanation for why the Board, on the one hand, has refused them permission to rent their unit, and, on the other hand, has allowed other shareholders to rent their units. The Caynes, therefore, believe that Friedland's personal animus towards them has resulted in such disparate and inequitable treatment.

**IV. PETITIONER SENDS THE CORPORATION  
A BOOKS AND RECORDS DEMAND.**

31. Mr. Cayne believes that the Board's repeated rejections of prospective purchasers and refusal to allow the Caynes to rent their unit are driven by personal animus and self-interest on part of the Board. In order to determine whether the Board has acted in good faith, in the interest of all shareholders, and otherwise lawfully when making such decisions, Mr. Cayne made a demand to inspect the books and records of the Corporation.

32. On July 2, 2019, Mr. Cayne, by his attorneys, sent a letter demanding the inspection of the Corporation's books and records to the Corporation. *See* Ex. A.

33. The Corporation, through its agent, confirmed receipt of the Demand on July 3, 2019. A true and correct copy of the Corporation's confirmation email is annexed hereto as **Exhibit D**. FedEx provided delivery confirmation for the original copy of the Demand that morning as well. A true and correct copy of the FedEx delivery confirmation is annexed hereto as **Exhibit E**.

34. Inexplicably, the Corporation failed to respond to the Demand in any manner whatsoever, even though the deadline for inspection was July 10, 2019.

**COUNT I**  
**(Inspection of Books and Records Under Bus. Corp. Law § 624 and Common Law)**

35. Mr. Cayne repeats and incorporates by reference each of the allegations set forth above.

36. 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. Proper purposes for the inspection of books and records include investigation of possible wrongdoing, board mismanagement, and breaches of fiduciary duty, as well as determining the value of shares.

37. The Demand sought books and records relating to the purchase and sale of units at 510 Park Avenue, including his own unit, the market value of the Corporation and its assets, policies of the Board regarding conflicts of interest and recusals, the Corporation's proprietary lease, and the identity of shareholders (the "Demanded Documents").

38. Specifically, the Demanded Documents included the following:

- a. All books and records concerning Apartment 6A at 510 Park Avenue;
- b. All books and records concerning the consideration, approval or rejection of prospective purchasers or purchases of Apartment 6A at 510 Park Avenue, including, without limitation, the policies and procedures related thereto, and the minutes of the Board and email communications among members of the Board concerning the same;
- c. All books and records concerning the consideration, approval or rejection of prospective purchasers or purchases of other units at 510 Park Avenue, including, without limitation, the policies and procedures related thereto, and the minutes of the Board and email communications among members of the Board concerning the same;
- d. All books and records concerning the rental of units at 510 Park Avenue, including, without limitation, the Corporation's policies and procedures related thereto, and the minutes of the Board and email communications among members of the Board;
- e. All books and records concerning the market value of the Corporation, the premises at 510 Park Avenue, any individual units at 510 Park Avenue, and shares associated with individual units, including, without limitation, appraisals and actual sale prices;
- f. All books and records concerning the recusal of any member of the Board from deliberations or consideration of potential Board action, including,

without limitation, the Corporation's policies and procedures addressing conflicts of interest involving members of the Board;

- g. All books and records concerning the Corporation's proprietary lease and any modifications or proposed modifications thereto; and
- h. All books and records sufficient to identify the Corporation's shareholders as of the date of this letter.

39. The Demand also provided the purpose of the Demand:

Mr. Cayne seeks the Requested Information in connection with his role as shareholder of the corporation, including his consideration of potential wrongdoing, mismanagement and breaches of fiduciary duty by the members of the board in connection with the proposed purchase and sale of units at 510 Park Avenue, including, without limitation, whether the board has acted in bad faith, in a discriminatory manner, or without regard for the best interests of the Corporation and its shareholders.

40. The Demand set a deadline for inspection of July 10, 2019, more than five days from the receipt of the Demand, as required by Bus. Corp. Law § 624(b).

41. Mr. Cayne also provided the Corporation with an affidavit pursuant to Section 624(c) contemporaneously, stating that he did not seek the information for a purpose not in the interest of the business of the corporation and that he had not sold any list of shareholders within the last five years. A true and correct copy of Mr. Cayne's Section 624(c) affidavit is annexed hereto as **Exhibit F**.

42. The Corporation confirmed receipt of the Demand, *see* Ex. E, but has nevertheless failed to respond as of the initiation of this proceeding and has thus refused to comply with its obligations under Section 624 and New York common law.

43. The Demanded Documents are necessary in order for Petitioner to investigate the Board's actions relating to the sale and rental of units at 510 Park Avenue.

44. Petitioner's purposes are proper and Petitioner has a clear right to the enforcement of, and the Corporation's compliance with, Petitioner's Demand, made pursuant to Section 624(b) and New York common law.

45. As such, Petitioner is entitled to inspect and receive copies of the Demanded Documents.

46. Petitioner lacks an adequate remedy at law.

47. There has been no prior application for the relief requested herein.

### **PRAYER FOR RELIEF**

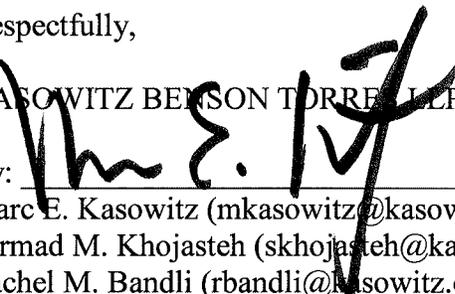
WHEREFORE, Petitioner respectfully requests that the Court grant his application and enter an order for relief as follows:

- a) directing Respondent to produce and permit Petitioner and/or his attorneys or agents to inspect and copy the Demanded Documents forthwith;
- b) awarding the costs and fees associated with the prosecution of this action to the Petitioner; and
- c) awarding such other and further relief as the Court deems appropriate.

Dated: New York, New York  
August 26, 2019

Respectfully,

KASOWITZ BEYSON TORRES LLP

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