

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

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ISAAC AZARIA, Individually and Derivatively on behalf of	:	Index No.
695 MONROE LLC	:	504057/2020
	:	
Plaintiff,	:	
	:	<u>VERIFIED</u>
-against-	:	<u>COMPLAINT</u>
	:	
MICHAEL UHR, JONATHON RUBIN a/k/a	:	
JONATHAN RUBIN, and 695 MONROE LLC	:	
	:	
Defendants.	:	
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The Plaintiff, Isaac Azaria, by his attorneys, the Law Offices of Fred L. Seeman, respectfully alleges and states, upon information and belief, as follows:

THE PARTIES

1. That Plaintiff, Isaac Azaria (hereinafter the "Azaria"), is an individual with an address located at 2170 Ocean Parkway, Brooklyn, New York 11223
2. That Defendant, 695 Monroe LLC (hereinafter "695 Monroe"), is a duly organized New York Limited Liability Company with offices located at 695 Monroe Street, Brooklyn, New York 11221.
3. That 695 Monroe is governed by an Operating Agreement dated July 30, 2019 (hereinafter the "Operating Agreement").
4. 695 Monroe is a nominal Defendant herein.
5. That Azaria is a member of 695 Monroe Street LLC (hereinafter "695 Monroe").
6. That Azaria holds a 58% membership interest in 695 Monroe. *Operating Agreement, Art. 5, Sec. 1.*
7. That, upon information and belief, Defendant, Michael Uhr (hereinafter "Uhr"), is an individual residing at 9 Engelberg Terrace, Lakewood, New Jersey 08701.
8. That, upon information and belief, Uhr holds a 42% membership interest in 695 Monroe. *Operating Agreement, Art. 5, Sec. 1.*

9. That, upon information and belief, Defendant Jonathon Rubin a/k/a Jonathan Rubin (hereinafter "Rubin") is an individual with a place of business located at 212 Second Street, Suite 405, Lakewood, New Jersey 08701.
10. That, upon information and belief, Rubin is the Manager of 695 Monroe. *Operating Agreement, Art. 4, Sec. 1(e)*.
11. That Rubin holds no membership interest in 695 Monroe.

OVERVIEW

12. This action is predicated upon the Defendants' breach of the Operating Agreement by (i) failing to provide Azaria with an accounting of 695 Monroe's books and records and (ii) attempting to sell, transfer, or otherwise dispose of the Premises without the majority member's consent.
13. This action seeks an accounting and a judicial dissolution of 695 Monroe based upon: (i) a failure to account after due demand, (ii) attempts to transfer the sole asset of 695 Monroe, without Azaria's consent, in contravention of the Operating Agreement and (iii) the Defendants' breach of their fiduciary duties

BACKGROUND

14. That, upon information and belief, 695 Monroe is an active New York Limited Liability Company that was registered with the New York Department of State on or about October 8, 2015.
15. That on or about November 9, 2015, 695 Monroe purchased the Premises for approximately \$890,000.00.
16. That, upon information and belief, at the time of said purchase, 695 Monroe was governed by a prior operating agreement that listed Uhr as the sole member.

PREMISES TO BE CONVERTED TO CONDOMINIUM

17. That, upon information and belief, the operating agreement in place at the time the Premises was purchased called for the Premises to be converted into a four (4) unit residential condominium.

18. That, upon information and belief, an Offering Plan for the Premises was submitted to the New York Attorney General for review on July 23, 2018.
19. That, upon information and belief, the Offering Plan lists Uhr as the sole principal of 695 Monroe.
20. That in July, 2019, Uhr entered into the current Operating Agreement with Azaria, which granted Azaria a majority (58%) membership interest in 695 Monroe, in exchange for his contribution of \$1,037,000.00.
21. That, under the 2019 Operating Agreement, the purpose of 695 Monroe is to convert the Premises into a residential condominium.
22. That, upon information and belief, Uhr has failed to amend the proposed Offering Plan to include Azaria's membership interest of 695 Monroe in contravention of the Martin Act.
23. That, upon information and belief, the Offering Plan is pending review by the Attorney General.

DEMAND FOR ACCOUNTING AND IMPROPER DISCLOSURE

24. That, pursuant to Article 5, paragraph 6 of the 2019 Operating Agreement:

The Manager shall maintain and preserve, during the term of the Company, and for five (5) years thereafter, all accounts, books, and other relevant Company documents. Upon reasonable request, each member shall have the right, during ordinary business hours, to inspect and copy those Company documents at the requesting member's expense.

25. That Azaria, having never received any accounting whatsoever and therefore, believing that Uhr and, or, Rubin were misappropriating his contribution to 695 Monroe, requested, by letter dated December 13, 2019, an accounting of 695 Monroe's finances, including 695 Monroe's tax returns, balance sheets and profit and loss statements.
26. That, to date, the Defendants have not provided an accounting or responded to the demand letter.
27. That, on or about April 24, 2020, Rubin, improperly declared himself a member of 695 Monroe in a Certificate of Declaration filed with the City Register of the City of New York.

28. That, in Certificate of Declaration, Rubin improperly cites an operating agreement dated October 25, 2015 as his authority to act on behalf of 695 Monroe.
29. That, the operating agreement referenced in the Certificate of Declaration was abrogated and replaced by the 2019 Operating Agreement.
30. That the Certificate of Declaration failed to disclose the 2019 Operating Agreement and/or Azaria's membership in 695 Monroe.
31. That Azaria was unaware that this document was going to be filed, and never authorized the filing thereof.
32. That, upon information and belief, Uhr and Rubin have, at all times, acted without Azaria's knowledge or consent, in an effort to "freeze" Azaria out of 695 Monroe and prevent him from receiving his share of proceeds ultimately received from the sale of the condominium units.

RELATED ACTION

33. That Uhr and Azaria are also members of an entity known as 697 Monroe LLC, the sponsor of the condominium located at 697 Monroe Street, Brooklyn, New York.
34. That the Operating Agreement for 697 Monroe similarly called for the conversion of the 697 Monroe property to be converted into a condominium, and for Uhr and Azaria to receive their *pro rata* share of the proceeds.
35. That the 697 Monroe property was successfully converted into a condominium, and each of the four (4) condominium units were sold.
36. That Azaria has not received his share of the proceeds, nor has he received an accounting of 697 Monroe LLC's financial books and records, despite due demand therefor.
37. That Uhr failed to list Azaria as a member of 697 Monroe LLC in the offering plan and refuses to communicate with Azaria in any way whatsoever.
38. That, accordingly, Azaria commenced an action, entitled *Azaria v. Uhr et. al.*, *Index No.:* 503806/2020, seeking, *inter alia*, his share of the sale proceeds and an accounting.

39. That Uhr and Rubin, upon information and belief, are now attempting to likewise ignore Azaria's member interest to the detriment of Azaria.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

40. That by letter dated December 13, 2019, Azaria demanded an accounting, to no avail.
41. That a demand upon 695 Monroe would be futile inasmuch as Uhr and Rubin have: (i) ignored all demand communications from Azaria, (ii) have repeatedly violated the Operating Agreement and the Martin Act, and (iii) have breached their fiduciary duties owed to 695 Monroe, thereby making them incapable of making the impartial, unbiased determination as to whether to bring a lawsuit on behalf of 695 Monroe.
42. That, accordingly, the requirements of a demand for derivative relief should be excused.

AS AND FOR A FIRST CAUSE OF ACTION
(Accounting)

43. That Azaria repeats and realleges the foregoing as if fully repeated herein.
44. That Azaria has performed his contractual obligations under 695 Monroe's Operating Agreement.
45. That Uhr and, or, Rubin have breached Article 5, Section 6 of the Operating Agreement by, amongst other things, failing to provide or make available to Azaria (i) the books and records of 695 Monroe, (ii) financial statements showing deposits into the 695 Monroe accounts, balance sheets, statements of income, and net cash flow statement and (iii) tax information concerning 695 Monroe required for Azaria to prepare his tax returns.
46. That Uhr and Rubin have breached the Operating Agreement by refusing to provide the demanded documents, or even respond to Azaria in any way.
47. By reason of the foregoing, Azaria requests that the Court direct the Defendants to provide Azaria with a formal "accounting", including, but not limited to (i) the books and records of 695 Monroe, (ii) financial statements, balance sheets, statements of income, and net cash flow statement and

(iii) tax information, including K-1 statements concerning 695 Monroe as is required for Azaria to prepare his tax returns.

AS AND FOR A SECOND CAUSE OF ACTION
(Judicial Dissolution)

- 48. That Azaria repeats and realleges the foregoing as if fully repeated herein.
- 49. That, additionally, Uhr and Rubin refuse to amend the Offering Plan to accurately reflect the principals of 695 Monroe, in violation of the Martin Act.
- 50. That such deliberate violation of the Martin Act was designed to “freeze out” Azaria and may ultimately prevent the Attorney General from approving the Offering Plan.
- 51. That by filing false or misleading information with the Attorney General, Uhr and Rubin are frustrating the purpose of the formation of 695 Monroe.
- 52. That, based upon the foregoing, it is no longer reasonably practicable to carry on the business of 695 Monroe in conformity with the Operating Agreement.
- 53. That, additionally, upon information and belief, Uhr and Rubin have misappropriated and, or, diverted Azaria’s financial contribution away from 695 Monroe, thereby making it financially unfeasible to convert the Premises into a condominium.
- 54. That, accordingly, Azaria demands a judgment dissolving 695 Monroe and, upon such dissolution, the appointment of a referee to convey the Premises to Azaria in accordance with his membership interest as determined by the Court.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Operating Agreement)

- 55. That Azaria, individually and derivatively on behalf of 695 Monroe, repeats and realleges the foregoing as if fully repeated herein.
- 56. That Uhr and, or, Rubin are attempting to sell or otherwise dispose of the Premises without the consent of Azaria, the majority member of 695 Monroe.
- 57. That Article 9, Section 1 of the Operating Agreement states that

[e]xcept as hereinafter set forth, no Member may sell, assign, transfer, encumber or otherwise dispose of all or any part of the property of the Company or its interest in the Company.

58. That Uhr and, or, Rubin are causing the assets of 695 Monroe to be diverted away from 695 Monroe without the required authorization.
59. That Azaria has fully performed his obligations under the Operating Agreement and remains a member of good standing of 695 Monroe.
60. That, based upon the foregoing, Azaria, individually and derivatively on behalf of 695 Monroe, demands judgment against Uhr and Rubin in an amount to be determined by the Court, by in no event less than \$2,000,000.00.

AS AND FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as against Rubin)

61. That Azaria, individually and derivatively on behalf of 695 Monroe, repeats and realleges the foregoing as if fully repeated herein.
62. That Rubin, as the Manager of 695 Monroe, owed, and continues to owe a fiduciary duty to Azaria and to 695 Monroe.
63. That it was the duty of Rubin to carefully, and honestly administer the affairs of 695 Monroe in accordance with the Operating Agreement, to act solely in the interest of 695 Monroe and its members, and to protect the property and assets of 695 Monroe.
64. That it was the duty of Rubin not to waste the assets of 695 Monroe and not to improperly favor his own interests or the interests of any member over those of 695 Monroe.
65. That Rubin's conduct as Manager of 695 Monroe has, upon information and belief, substantially injured Azaria inasmuch as Rubin has sought to sell the Premises and divert the sale proceeds away from Azaria.
66. That, upon information and belief, Rubin breached his fiduciary duties to Azaria by failing, *inter alia*, to maintain contact with Azaria, failing to notify Azaria of the conduct of 695 Monroe that

required Azaria's consent, misappropriating Azaria's financial contribution to 695 Monroe and by failing to provide financial and tax records to Azaria following Azaria's request.

67. That Rubin further breached his fiduciary duties by relying upon an invalid operating agreement when filing the Certificate of Declaration.
68. That, additionally, Rubin has breached his fiduciary duties by refusing to amend the proposed Offering Plan to include Azaria as a member of 695 Monroe in violation of the Martin Act.
69. Based upon the foregoing, Azaria, individually and derivatively on behalf of 695 Monroe, demands judgment against Rubin in an amount to be determined by the Court, but no less than \$2,000,000.00.

AS AND FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty as against Uhr)

70. That Azaria, individually and derivatively on behalf of 695 Monroe, repeats and realleges the foregoing as if fully repeated herein.
71. That, at all relevant times, Uhr has held himself out as a "managing member" of 695 Monroe.
72. That, as a managing member, Uhr owes a fiduciary duty to 695 Monroe and Azaria pursuant to Section 401 and 409 of the New York Limited Liability Company Law.
73. That it was the duty of Uhr, as managing member, to carefully, and honestly administer the affairs of 695 Monroe in accordance with the Operating Agreement, to act solely in the interest of 695 Monroe and its members, and to protect the property and assets of 695 Monroe.
74. That it was the duty of Uhr, as managing member, not to waste the assets of 695 Monroe and not to improperly favor his own interests or the interests of any member over those of 695 Monroe.
75. That Uhr's conduct as managing member of 695 Monroe has, upon information and belief, substantially injured Azaria, inasmuch as Uhr has sought to sell the Premises and divert the sale proceeds away from Azaria.

76. That, upon information and belief, Uhr breached his fiduciary duties to Azaria by failing, *inter alia*, to maintain contact with Azaria, failing to notify Azaria of the conduct of 695 Monroe that required Azaria's consent, misappropriating Azaria's financial contribution to 695 Monroe and by failing to provide financial and tax records to Azaria following Azaria's request.
77. That, additionally, Uhr has breached his fiduciary duties by refusing to amend the pending Offering Plan to include Azaria as a member of 695 Monroe, thereby causing 695 Monroe to violate the Martin Act.
78. Based upon the foregoing, Azaria, individually and derivatively on behalf of 695 Monroe, demands judgment against Uhr in an amount to be determined by the Court, but no less than \$2,000,000.00.

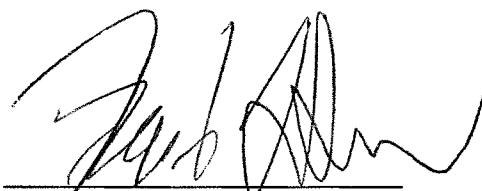
AS AND FOR AN SIXTH CAUSE OF ACTION
(Legal Fees)

79. That Azaria, individually and derivatively on behalf of 695 Monroe, repeats and realleges the foregoing paragraphs as if fully set forth herein.
80. That, upon information and belief, the conduct of Uhr and, or, Rubin exceeded their authority to act inasmuch as it went beyond the scope of the Operating Agreement.
81. That Uhr and, or Rubin have acted in bad faith by attempting to "freeze" Azaria out of 695 Monroe and divert his financial contribution away from 695 Monroe for their own benefit, and to the detriment of Azaria and 695 Monroe.
82. That, upon information and belief, Uhr and Rubin are required to indemnify Azaria, and 695 Monroe, for any and all costs or damages that Azaria or 695 Monroe has incurred and will continue to incur as a result of their unwarranted conduct.
83. That, based upon the foregoing, Azaria, individually, and derivatively on behalf of 695 Monroe, demands legal fees in an amount to be determined at trial, but in no event less than \$50,000.00.

WHEREFORE, the Plaintiff respectfully requests the following:

1. On his First Cause of Action, an order directing that Uhr, and, or, Rubin, to provide Plaintiff with a formal "accounting" as required under the Operating Agreement;
2. On his Second Cause of Action, a judgment directing the dissolution of 695 Monroe LLC and, upon dissolution, the appointment of a referee to convey ownership of the Property to Azaria in an amount to be determined by the Court;
3. On his Third Cause of Action, a judgment in an amount to be determined by the Court, but no less than \$2,000,000.00, plus costs and interest;
4. On his Fourth Cause of Action, a judgment in an amount to be determined by the Court, but no less than \$2,000,000.00, plus costs and interest;
5. On his Fifth Cause of Action, a judgment in an amount to be determined by the Court, but no less than \$2,000,000.00, plus costs and interest;
6. On his Sixth Cause of Action, for a judgment in an amount to be determined by the Court but no less than \$50,000.00, plus costs and interest; and
7. For such other and further relief as the Court seems just and proper as sought in the respective causes of action.

Dated: New York, New York
July 10, 2020



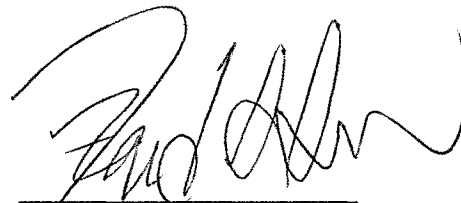
Law Office of Fred L. Seeman
By: Fred L. Seeman, Esq.
Attorney for Plaintiff
32 Broadway, Suite 1214
New York, New York 10004
Tel: (212) 608-5000

VERIFICATION

FRED L. SEEMAN, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following:

1. I am an attorney duly admitted to practice law in the State of New York.
2. I am the attorney for the Plaintiff, Isaac Azaria. I have read the foregoing Complaint and know the contents thereof; I believe them to be true based upon the statements and/or records provided by the Plaintiff, his agents and/or employees, and contained in the file in my office.
3. This verification is made by counsel, pursuant to the provisions of CPLR §3020(d) inasmuch as the Plaintiff is presently not within the county in which we have our offices.

Dated: New York, New York
July 10, 2020



FRED L. SEEMAN