

**Matter of Melendez v 1862-66 3rd Ave. Hous. Dev.
Fund Corp.**

2007 NY Slip Op 33641(U)

November 8, 2007

Supreme Court, New York County

Docket Number: 0112704/2007

Judge: Nicholas Figueroa

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: FRANCO
Justice

PART 46

ADA MELONDEZ

- v -

1862-66 3RD AVE HOUSING

INDEX NO.

112704/07

MOTION DATE

10/31/07

MOTION SEQ. NO.

001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1, 2, 3

Answering Affidavits — Exhibits _____

4, 5

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

See accompanying decision and order

FILED

NOV 13 2007

COUNTY CLERKS OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: NOVEMBER 8, 2007

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

Index No. 112704/07

In the Matter of the Application of,

AIDA MELENDEZ, IS DORA HERNANDEZ,
DAVID QUINONES, SAFA EL GANAM,
LUCY VEINTIDOS, JOSE ACOSTA and
CHARLIE CRUZ VASQUEZ,

**DECISION
AND ORDER**

Petitioners,

for an Order Pursuant to BCL §624 to Produce for
Inspection the Books and Records of 1862-66 3rd
Avenue Housing Development Fund Corporation,

- against -

1862-66 3rd AVENUE HOUSING DEVELOPMENT
FUND CORPORATION AND PETER "PETE"
VASQUEZ, President of 1862-66 3rd AVENUE
HOUSING DEVELOPMENT FUND
CORPORATION,

Respondents.

Nicholas Figueroa, J.:

Petitioners move, pursuant to Business Corporations Law §624, to compel respondents to provide them with seventeen groups of documents. The petition is the only document containing that demand. However, a prior document, a petition by various shareholders of the respondent corporative housing corporation, dated April 26, 2007, demanded the following items:

"Annual financial report for the last two (2) years. Annual financial report by an outside accountant, copy of a rent roll, no more than 30 days old. A written reason why each apartments Proprietary Lease was not [sic] distribute."

In opposing the petition, respondents argue that petitioner Lucy Veintidos did not sign the

document and that petitioner Jose Acosta, who signed the document, is not a shareholder. Therefore, these two persons have no standing to bring this proceeding. Respondents argue that rent rolls and financial statements were distributed to the shareholders at a June 5, 2007 shareholders meeting and that these documents satisfied the April 26, 2007 demand. Respondents further argue that nothing in BCL §624 entitles petitioners to a written reason why proprietary leases were not provided. Respondents also argue that petitioner Rafael Ganan "should be estopped from maintaining the within proceeding because he attempted to disrupt and prevent the distribution of information demanded in said Demand of certain shareholders dated April 26, 2007."

At oral argument, petitioner's counsel stated that Acosta is not a shareholder; rather, he is the offspring of a deceased shareholder and that the corporation's rule deem a shareholder's heir to be treated as a shareholder. However, nothing in the papers submitted on this motion reveal such a provision.

Petitioner's attorney also argued that, based on her knowledge as a certified public accountant, the financial statements respondent provided are inadequate. However, she did not submit an affidavit to this effect with the motion papers. Nor do the papers challenge the adequacy or sufficiency of the statements. Petitioner's attorney also argues that the proprietary leases obligate the corporation to pay the shareholders the cost of an outside audit.

An examination of the papers submitted reveals that respondents provided the financial reports. Although the reports state that they are "Unaudited-For Management Purposes Only", the corporate bylaws, Article III, section 3 do not require the corporation furnish the shareholders with an audited report. Rather, the section reads that

"At the close of each fiscal year, the books and records of the Corporation shall be audited by a Certified Public Accountant or such other person approved by the Board or shareholders. Based on such

reports, the Corporation shall furnish the shareholders with an annual financial statement; including the income and disbursements of the corporation.”

The proprietary lease, section 1.03, reads

“1.03 Inspection of Books of Account

The Corporation shall keep full and correct books of account at its principal office or at such other place as the Directors may from time to time determine, and the same shall be open during all reasonable hours to inspection by the shareholder or a representative of the shareholder. The Corporation shall deliver to the shareholder within a reasonable time after the end of the fiscal year an annual report of corporate financial affairs. The report shall include a balance sheet and a statement of income and expenses, verified by the president and treasurer or by a majority of the Directors, and prepared by an...”

Petitioners did not supply a complete copy of the section 1.03. Therefore, the court cannot know whether the copies of the financial statements respondents attach to their papers comply with the requirements of the missing portion of the proprietary lease. However, the financial statements do not comply with the requirements of the portion of the proprietary lease section that petitioners have supplied.

The financial statements are not verified by the corporation’s “president and treasurer or by a majority of the Directors” as the proprietary lease requires. Therefore, petitioners are entitled to the verified reports.

The petitioners are not entitled to the items demanded in the instant petition, as they have not made the five day written demand for these items that BCL §624(b) requires.

Petitioners are not entitled to the audited financial statements demanded in the April 26, 2007 demand, as nothing in the corporation’s by-laws or in the portion of the proprietary lease submitted to the court requires respondents to furnish an audited report.

Petitioners are not entitled to a written reason why proprietary leases were not distributed,

as BCL §624, the only statute petitioners rely on, does not provide for the creation and distribution of such a document. Respondents have already provided the demanded rent rolls, therefore, the part of the motion seeking that material is academic.

Finally, the part of the petition made by Jose Acosta and Lucy Veintidos must be dismissed, as Acosta is not a shareholder and Veintidos has not made a written demand for any material.

Accordingly, it is

ORDERED that the petition is granted to the extent that within twenty days of service of a copy of this order with notice of entry, respondents furnish copies of the corporation's financial reports for the two years preceding April 26, 2007 to petitioners Aida Melendez, Isidora Hernandez, David Quinones, Rafael Ganan and Charlie Cruz Vasquez, and that such reports be verified in accordance with section 1.03 of the proprietary lease issued by respondents, and it is further

ORDERED that the petition is otherwise denied.

This constitutes the decision and order of the court.

Dated: November 8, 2007

ENTER



J.S.C.

[FILED]
NOV 13 2007
COUNTY CLERK'S OFFICE
NEW YORK