

**Board of Mgrs. of the 257 W. 17th St. Condominiums
v 257 Assoc. Borrower LLC**

2018 NY Slip Op 32314(U)

September 18, 2018

Supreme Court, New York County

Docket Number: 160585/2013

Judge: Robert D. Kalish

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ROBERT D. KALISH PART IAS MOTION 29EFM

Justice

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THE BOARD OF MANAGERS OF THE 257 WEST 17TH ST.
CONDOMINIUMS,

Plaintiff,

- v -

257 ASSOCIATES BORROWER LLC and BBP FITNESS LLC
D/B/A BRICK NEW YORK,

Defendants.

INDEX NO. 160585/2013

MOTION DATE 09/17/2018

MOTION SEQ. NO. 003

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103

were read on this motion for CONTEMPT.

Upon the foregoing documents and after hearing testimony and oral argument, it is ORDERED that the instant motion by Plaintiff Board of Managers of the 257 West 17th St. Condominiums (“Plaintiff Condominium”) to hold Defendant BBP Fitness LLC d/b/a Brick New York (“Defendant Brick”) in criminal and civil contempt of court, pursuant to Judiciary Law §§ 750, 751, 753, 756, 772 and 773 is granted for the reasons stated on the record of September 17, 2018; and it is further

ORDERED, ADJUDGED and DECREED that Defendant Brick is guilty of civil contempt of court by clear and convincing evidence, in having knowingly disobeyed this Court’s lawful mandates as contained in the so-ordered stipulation dated December 7, 2015 (NYSCEF Document No. 55) (“2015 Stipulation”)— which annexed, incorporated and required compliance with a Resolution of the Board of Standards and Appeals, dated October 27, 2015—and the so-ordered stipulation of December 21, 2017 (NYSCEF Document No. 76) (“2017 Stipulation”); and it is further

ORDERED that the aforesaid misconduct of the Defendant Brick is found to have consisted of both failing to perform acts or duties, which were within Defendant Brick’s power to perform, and performing acts which affirmatively violated the Stipulations of 2015 and 2017, namely by allowing individuals on its premises to: (1) use barbell weights in excess of 135 pounds; (2) drop weights

without the use of "Rogue Pads"; and (3) perform "Overhead Drops" of weights or weighted objects; and it is further

ORDERED that Plaintiff Condominium has presented clear and convincing evidence that the aforesaid misconduct actually did defeat, impair, impede and prejudice the rights and remedies of Plaintiff Condominium herein by causing at least one resident to experience significant noise and vibrations in his apartment on at least fifteen (15) separate days; and it is further

ORDERED that as a penalty for its civil contempt to Defendant Brick, Plaintiff is awarded a judgment of \$3,750, representing a fine of \$250 dollars for each of the fifteen (15) days during which the aforesaid misconduct prejudiced the rights of Plaintiff Condominium; and it is further

ORDERED that the clerk of the court is directed enter said judgment of \$3,750 in favor of Plaintiff Condominium as against Defendant Brick accordingly; and it is further

ORDERED that within ten days (10) days of being served with a copy of this order with notice of entry, Defendant Brick is directed to pay Plaintiff Condominium the sum of \$3,750; and it is further

ORDERED, ADJUDGED and DECREED that Defendant Brick is guilty of criminal contempt of court beyond a reasonable doubt, in having knowingly and willfully disobeyed this Court's lawful mandates as contained in 2015 Stipulation and the 2017 Stipulation by committing the aforesaid misconduct; and it is further

ORDERED that Plaintiff Condominium has presented evidence of the aforesaid misconduct, establishing beyond a reasonable doubt that Defendant Brick committed at least fifty (50) violations of the 2015 and 2017 Stipulations; and it is further

ORDERED that as a penalty for its criminal contempt Defendant Brick, within ten days (10) days of being served with a copy of this order with notice of entry, is directed to pay a fine of \$25,000 to the New York City Department of Finance, representing a fine of \$500 for each of the, at least, fifty (50) violations of the 2015 and 2017 Stipulations; and it is further

ORDERED that Defendant Brick shall file, on NYSCEF, a receipt of said payment to the New York City Department of Finance within ten (10) days of making payment; and it is further

ORDERED that this Court finds that it is not appropriate to offer Defendant Brick an opportunity to purge itself of its civil or criminal contempt given the long and repeated history of Defendant Brick's violations and the past opportunities Defendant Brick has had to take meaningful action towards stopping its violations of the 2015 and 2017 Stipulations; and it is further

ORDERED that Plaintiff Condominium is entitled to reasonable attorney fees pursuant to paragraph 13 of the 2015 Stipulation and paragraph 17 of the 2017 Stipulation; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court (unless the parties agree by stipulation to have said JHO or Special Referee hear and determine the issue pursuant to CPLR 4317 [a]) regarding the following individual issue of:

(1) the amount of reasonable attorney fees that Plaintiff is entitled to pursuant to paragraph 13 of the 2015 Stipulation and paragraph 17 of the 2017 Stipulation;

and it is further

ORDERED that the powers of the JHO or Special Referee shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part, shall assign this matter to an available JHO or Special Referee to hear and report as specified as above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for Plaintiff Condominium shall, within 30 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (available at <http://www.nycourts.gov/courts/1jd/suptctmanh/SR-JHO/SRP-InfoSheet.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of

the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320 [a]) and, except as otherwise directed by the assigned JHO/Special Referee, the trial of the issues specified above shall proceed day to day until completion; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO or Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the sub-paragraph (1) hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon.

The foregoing constitutes the Order, Judgment and Decision of this Court.

9/18/2018
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETtle ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Robert D. Kalish
HONORABLE ROBERT D. KALISH
J.S.C.