

**Goodman v Board of Mgrs. of the Residential Section
of 685 Fifth Ave. Condominium**

2026 NY Slip Op 31179(U)

March 24, 2026

Supreme Court, New York County

Docket Number: Index No. 164725/2025

Judge: Lyle E. Frank

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

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

JOHN GOODMAN, DIANE GOODMAN

Petitioner,

- v -

THE BOARD OF MANAGERS OF THE RESIDENTIAL
SECTION OF 685 FIFTH AVENUE CONDOMINIUM, BSD
685 NEW YORK PROPCO LLC,

Respondent.

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INDEX NO. 164725/2025

**MOTION DATE 11/20/2025,
01/08/2026,
01/08/2026**

MOTION SEQ. NO. 002 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 20, 45, 48, 50 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 003) 21, 22, 23, 24, 25, 26, 27, 46, 51 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 49 were read on this motion to/for DISMISS.

Upon the foregoing documents, motion 002 is denied, motion 003 is granted and motion 004 is granted.

Background

These motions arise out of a contentious books and records request. Petitioners are unitholders in a condominium managed by respondent The Board of Managers of the Residential Section of 685 Fifth Avenue Condominium (the “Board”). The building in question was sponsored and developed by respondent BSD 685 New York Propco LLC (“Sponsor”). The parties have a fractious relationship, and there are several other litigations pending between the parties regarding Petitioners’ dissatisfaction with their purchased luxury apartment. Petitioners

have been unsuccessfully attempting to obtain a list of books and records from the Respondents, making a written demand on August 15, 2025. In response, the Board produced some documents that Petitioners argue are insufficient. They have brought this present Article 78 special proceeding, seeking an order compelling the Respondents to produce the requested documents.

Discussion

In motion 002, Petitioners move by notice of petition for the relief sought in the petition. Motion 003 is the Sponsor's motion to dismiss the petition, and the Board has brought their own motion to dismiss the petition in motion sequence 004. A central issue to these motions is the question of whether Petitioners are required to submit any dispute between the parties over a books and records request to arbitration. A further issue is whether the Sponsor is an appropriate party to this proceeding. For the reasons that follow, the notice of petition is denied and motion sequence 004 is granted on the grounds that the petition is premature. Motion sequence 003 is granted as the Sponsor is not an appropriate party to this proceeding.

The Sponsor Is Not a Proper Party to This Proceeding

The Sponsor has moved to dismiss the petition as asserted against them on the grounds that they are not a proper party. A books and records request pursuant to RPL § 339-w may be brought to the "manager or board of managers." Petitioners argue that because a sponsor is required by the General Business Law to provide copies of the offering plan to unit purchasers, and because the Sponsor is a person who may be affected by this special proceeding, they have inspection rights for records maintained by the Sponsor. The Court does not find these arguments persuasive. It is mere speculation that the condominium books and records sought are in the possession of the Sponsor rather than the Board. Petitioners have cited to no case law supporting the proposition that a condominium books and records inspection request may be made on

parties that a party only speculates is in possession of some of the relevant books and records. Furthermore, Petitioners never allege that they have made a books and records inspection demand on the Sponsor. As will be addressed below, such a demand is necessary before mandamus relief is available. Therefore, it is proper to dismiss the petition as to the Sponsor.

This Dispute Is Not Subject to Arbitration Because Petitioner's Request Does Not Arise Out of the Bylaws

An initial issue is what source of authority Petitioners have for demanding to inspect the books and records. Respondents argue that this dispute must be submitted to arbitration pursuant to the bylaws, which contains a broad arbitration provision for “[a]ny dispute, claim or controversy arising out of or relating to” the bylaws. While there is an inspection right delineated in the condominium’s bylaws, that is not the only basis that Petitioners cite to in support of their demand. A condominium shareholder’s right to inspect books and records can also stem from Real Property Law § 339-w as well as the common law. *Pomerance v. McGrath*, 104 A.D.3d 440, 441 [1st Dept. 2013]; *see also Matter of Healy v. Carriage House Condominium*, 166 A.D.3d 518, 519 [1st Dept. 2018] (outlining a broad variety of documents available for shareholder inspection under the common law).

If Petitioners are seeking books and records pursuant to statutory and/or common law rights, then any dispute over an inspection request does not arise out of the bylaws (thus the arbitration provision would not be triggered). Here there is no clear indication that in executing the bylaws Petitioners intended to submit *all* their disputes with Respondents to arbitration, or that Petitioners were waiving their statutory and common-law rights of inspection in agreeing to the bylaws. Absent such a clear agreement, this dispute is not subject to arbitration. *See, e.g., Schindler v. Cellco Partnership*, 200 A.D.3d 505, 506 [1st Dept. 2021]; CPLR § 7503(a)

The Petition Must Be Denied as Premature

As stated above, the Board provided documents in response to Petitioners’ demand letter. The Board’s email stated that “to the extent there is additional information that we can provide after you have reviewed the attached, please let us know.” It is not disputed that Petitioners never followed up with this email or asked to view more documents. They argue briefly that the Board’s representation in the email was “nothing more than a deceptive attempt to give the appearance of cooperation”, but such an argument is merely speculative. When a party brings a petition seeking mandamus, as is the case here, “a party must first make a demand and await a refusal.” *Matter of Schwartz v. Morgenthau*, 23 A.D.3d 231, 233 [1st Dept. 2005]. Here, Petitioners should have demanded that the Board supplement their production with the books and records that they feel are missing from the response and then proceeded with seeking mandamus relief should the Board have refused the demand. Because Petitioners have not demonstrated that they have had their demand refused, this present proceeding is not ripe. Accordingly, it is hereby

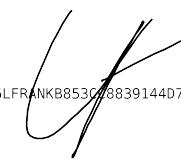
ADJUDGED that motion sequence 002 is denied; and it is further

ADJUDGED that motion sequence 003 is granted; and it is further

ADJUDGED that motion sequence 004 is granted, and the petition is dismissed without prejudice as premature.

3/24/2026

DATE



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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE