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

PRESENT: COBB Justice — PART 6

PEOPLE OF STATE OF NY
-v-
YAIR LEVY

INDEX NO. 401478/10
MOTION DATE 3/1/11
MOTION SEQ. NO. 005
MOTION CAL. NO. ____

The following papers, numbered 1 to 8 were read on this motion to/for expand record

| | PAPERS NUMBERED |
|---|---|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | 1-4, 7A |
| Answering Affidavits — Exhibits | 8 |
| Replying Affidavits | |

**Cross-Motion:** ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion decided in accordance with accompanying decision and order.

Dated: 5/25/11

J.S.C.

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☑ SETTLE ORDER/ JUDG.

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

**SUPREME COURT OF THE STATE OF NEW YORK**
**NEW YORK COUNTY: IAS PART 6**

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PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, Attorney General of the
State of New York,

Petitioner,

Index No. 401478/10

-against-

**Decision and Order**

YAIR LEVY and YL RECTOR STREET, LLC,

Respondents.

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**JOAN B. LOBIS, J.S.C.:**

Motion Sequence Numbers 001 and 005 are hereby consolidated for disposition.

This is a proceeding brought on behalf of the People of the State of New York by Attorney General Eric T. Schneiderman (the "AG") against respondents YL Rector Street LLC ("YL"), the sponsor of a non-eviction condominium conversion plan, and its principal and managing member, Yair Levy ("Mr. Levy"). The petition charges respondents with fraud, deceitful conduct, and other illegalities in connection with the offering for sale of condominium units at 225 Rector Place in Manhattan (the "Condominium"), and seeks monetary damages, penalties, costs, and permanent injunctive relief. Petitioner claims that respondents failed to fund the Condominium's reserve fund in accordance with the representations in the Condominium's offering plan (the "Offering Plan") and the applicable law; failed to make a required payment in lieu of taxes (PILOT),[1] as promised in the Offering Plan; and raided the Condominium's reserve fund, using the monies so obtained for improper purposes, thereby leaving the Condominium in a compromised financial

[1] Instead of New York City real estate taxes, payments in lieu of taxes to the Battery Park City Authority were required.

position, without regard for the harm inflicted on the Condominium units' purchasers and tenants. It is also claimed that respondents failed to update the Offering Plan for completeness and accuracy, so as to provide prospective purchasers with a sufficient basis upon which to make a knowledgeable decision about whether to purchase.

A brief recitation of the procedural history of this special proceeding is warranted. The proceeding was commenced by the filing of the petition on June 9, 2010 (Motion Sequence Number 001). Attorney Andrea Roschelle, Esq., of Starr Associates, LLP, agreed to accept service of the petition on behalf of respondents. In early August 2010, petitioner moved (Motion Sequence Number 002) for a default judgment against respondents for having failed to answer the petition. In response to Motion Sequence Number 002, Mr. Levy filed a pro se cross motion to dismiss the petition. Before Motion Sequence Number 002 was fully submitted, respondents apparently "formally retained" Ms. Roschelle, who filed a reply affirmation on Motion Sequence Number 002 on behalf of both respondents in response to the AG's opposition to the cross motion. After permitting petitioner to submit a sur-reply to Ms. Roschelle's reply, this court denied the default motion on October 12, 2010, and denied the cross motion in a decision and order dated November 22, 2010 (the "November 2010 Decision"). The November 2010 Decision directed respondents to serve an answer to the petition within five (5) days of service of a copy of the decision with notice of entry.

After the November 2010 Decision was signed, but before they received notice of the decision, respondents moved (Motion Sequence Number 003) to supplement their cross motion on

Motion Sequence Number 002; this motion was denied as moot, as the November 2010 Decision had already been signed. On or about December 2, 2010, respondents moved (Motion Sequence Number 004) for an extension of time to serve their answer. Motion Sequence Number 004 was resolved pursuant to a stipulation so-ordered by this court on December 2, 2010, in which respondents' time to answer the petition was extended to December 20, 2010, petitioner's time to reply was extended to January 7, 2011, and the motion was to be fully submitted by January 11, 2011. The court never received respondents' answer by the submission date, although it did timely receive petitioner's reply papers. On or about December 22, 2010, respondents filed a notice that Rex Whitehorn, Esq., of Rex Whitehorn & Associates, P.C., was being substituted as their attorney in place of Ms. Roschelle.

On February 16, 2011, respondents moved, by order to show cause (Motion Sequence Number 005), for leave to supplement the record with additional papers and submit their answer to the petition. At oral argument on March 1, 2011, the court agreed to consider the supplemental papers submitted by respondents and to accept their late answer, which had apparently been timely served on petitioner. To that extent, this decision and order reflects that Motion Sequence Number 005 was previously granted at oral argument.

The Condominium consists of a leasehold interest in land located in Battery Park City, on which sits a building containing 303 residential units, a garage, and commercial units. On May 1, 2007, the AG's office accepted respondents' Offering Plan for filing. The stated purpose of the Offering Plan was to "set forth in detail all material facts relating to the offering by Sponsor of

the 303 Residential Units." Under the Offering Plan, Mr. Levy represented that he and YL had the primary responsibility for complying with Article 23-A of the General Business Law (commonly known as the Martin Act); the regulations promulgated under Title 13 of the New York Code of Rules and Regulations ("N.Y.C.R.R."), Part 23, which regulates, among other things, the offer and sale of condominiums; and any other applicable laws and regulations. Mr. Levy and YL further acknowledged that they were jointly and severally certifying, as required by 13 N.Y.C.R.R. §§ 23.3(ac) and 23.4(b), that the representations made in the Offering Plan and any subsequent amendments were and would be "complete, current and accurate" and would contain no omissions of material fact; no promises as to the future "beyond reasonable expectation or unwarranted by existing circumstances;" and no false statements where the sponsor and its principal knew the truth, could have known the truth, or lacked knowledge about the statement made.

Pursuant to 13 N.Y.C.R.R. § 23.3(ac), offering plans are required to state whether there will be a reserve fund, the amount of the fund, and which capital replacements and repairs will be credited against the sponsor's contributions to that fund. The reserve fund is only to be used for capital expenditures. Offering plans are required to comply with any law applicable to reserve funds.

Pursuant to the Administrative Code of the City of New York (Administrative Code)[2] § 26-703, condominium conversion plan sponsors are required to establish a reserve fund, which is to be used only for capital repairs, improvements, and replacements required for the

[2] The sections of the Administrative Code which are relevant to this proceeding are set forth in that portion of the code commonly known as "Local Law 70."

residents' health and safety. That regulation provides two ways for a sponsor to establish a reserve fund. The first alternative is for the sponsor to fully satisfy its obligation by placing three percent of the total price (as that term is defined under Administrative Code § 26-702[b]) of the condominium units being offered into a reserve fund and to transfer that fund to the condominium's board of managers within thirty (30) days of the first unit closing. Administrative Code § 26-703(a).

Under the second method of establishing a reserve fund (see Administrative Code § 26-703[b]), a sponsor may fully meet its reserve fund obligations over a five-year period. Under this funding method, the sponsor is required to make an initial contribution (the "Mandatory Initial Contribution") within thirty (30) days of the first unit closing, and is then required to make subsequent contributions as each unit is sold. The Mandatory Initial Contribution is to equal three percent of the actual sales price of all the units sold at the time the offering plan is declared effective. However, if that amount is less than one percent of the total price, the sponsor is required to deposit at least one percent of the total price into the reserve fund. After paying the Mandatory Initial Contribution into the reserve fund and transferring that fund to the board of managers, whenever a unit is sold after the offering plan is declared effective, the sponsor must deposit three percent of that unit's actual sales price into the fund within thirty (30) days of the sale. If, on the fifth anniversary due date of the Mandatory Initial Contribution, the amount in the reserve fund equals less than three percent of the total price of all of the units offered, the sponsor must make up the shortfall. Therefore, under the second funding alternative, within five years of the Mandatory Initial Contribution, the total of all contributions must equal or exceed the amount that would have been deposited under the first funding alternative, except to the extent that the sponsor received a credit against the Mandatory Initial Contribution.

Under the second funding alternative, a sponsor is entitled to claim and obtain a credit against the Mandatory Initial Contribution for the actual cost of capital replacements begun after the offering plan is filed and before it is declared effective, "provided, however, that any such replacements must be set forth in the plan together with their actual or estimated costs . . . ." Administrative Code § 26-703(c). Under section 26-702(c), a "capital replacement" is defined as "a building-wide replacement of a major component of the . . . (1) elevator; (2) heating, ventilation and air-conditioning; (3) plumbing; (4) wiring; [or] (5) window" systems of the building, or a "major structural replacement to the building; provided, however, that replacements made to cure code violations of record shall not be included." Notwithstanding the two funding alternatives, a sponsor is permitted to make contributions to the reserve fund earlier and in greater amounts than required. Administrative Code § 26-703(c).

As is relevant, respondents' Offering Plan estimated that the reserve fund would be in excess of six and a half million dollars; indicated that under the law the reserve fund could only be used for capital repairs, replacements, and improvements needed for the residents' health and safety; stated that the sponsor was required to establish a reserve fund pursuant to Local Law 70 and listed the two possible ways the reserve fund could be funded; indicated that if the sponsor elected the second funding alternative, it could choose to advance contributions to the reserve fund and take a credit against subsequent contributions due thereafter; recited that the sponsor could receive a credit against the Mandatory Initial Contribution for the cost of capital replacements commenced after the Offering Plan was filed and before it was declared effective; and indicated that the sponsor did not then anticipate taking such a credit, but that it reserved the right to do so, provided that any

qualifying work was performed[3] before the Offering Plan's effective date. A copy of Local Law 70 was appended to the Offering Plan. The Offering Plan further stated that a description of such qualifying work would be disclosed "in a duly filed amendment to the Plan." See 13 N.Y.C.R.R. § 23.5(a)(1) (if the offering plan does not comply with section 23.1[b], "due to change of circumstances, the passage of time or any other reason, the offering plan must be amended promptly.").

Under the Offering Plan, YL represented that it had the financial means to meet its duties with respect to unsold units; agreed to pay real estate taxes, among other charges, on the unsold units, in accordance with the Condominium's by-law provisions; and indicated that it intended to meet its duty in this regard through the sale proceeds from offered units, rental income from non-purchasing tenants, and financing.

The Offering Plan and by-laws provided that the Condominium's affairs would be governed by the Condominium's board, which would at first be made up of the one person designated by the commercial unit owners to comprise the commercial board, and two individuals selected by the sponsor as the residential board. The sponsor would initially retain the commercial units. Also, during the initial "Control Period," the sponsor would control the Condominium board and the residential board, until the earlier of five years after the first closing or when the sponsor owned less than 50% of the aggregate common interests of all units. The Condominium board was

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[3] It is unclear whether the word "performed" in this context simply referred to qualifying work which was "begun" before the Offering Plan's effective date. Administrative Code § 26-703(c).

charged with making decisions regarding repairs, replacement, and upkeep to the general common elements; the residential board was entitled to make similar decisions with respect to residential common elements; and the commercial board had a corresponding entitlement with respect to commercial common elements. The Offering Plan provided that the Condominium board was going to enter into a management agreement with Penmark Realty Corporation ("Penmark"), which would maintain and repair common elements "in the manner deemed advisable" by the various boards. Condominium board approval would be required for any ordinary repair expenditures over $10,000. Penmark was to be paid a yearly base salary of $100,000, and was to be bonded in the amount of $250,000 for any dishonest or fraudulent acts.

Respondents amended the Offering Plan eight (8) times before the plan was declared effective on December 13, 2007, by which time forty-six (46) prospective purchasers had executed purchase agreements.[4] Respondents amended the Offering Plan for the ninth time on February 15, 2008. In each amendment, respondents respresented that there had been no material changes in the Offering Plan, except those set forth in each amendment.

On April 4, 2008, the Condominium's first unit closed; therefore, the 30-day period, by which monies under either of the two funding alternatives had to be deposited into the reserve fund ended on May 4, 2008. Under the first funding alternative, respondents were to have deposited

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[4] In essence, an offering plan cannot be declared effective until purchase agreements have been executed and delivered by a minimum of 15% of a building's residential tenants or by purchasers who state that they intend to occupy a unit once it is vacated. General Business Law § 352-eeee(b).

$7,399,215 into the reserve fund by May 4, 2008. Under the second funding alternative, respondents were to have deposited a minimum of $2,466,450 as the Mandatory Initial Contribution, unless an appropriate credit was taken. Neither full amount was ever deposited into the reserve account.

In the meantime, respondents undertook to renovate the Condominium in 2007 and 2008, but never finished the renovations. In early 2009, respondents' lender commenced a foreclosure action against it, Mr. Levy, and others, claiming that respondents had defaulted on a $351,881.19 January 1, 2009 PILOT; abandoned the Condominium without heat or hot water; failed to pay subcontractors; failed to maintain a proper operating shortfall escrow account; failed to meet the minimum liquidity levels required by the loan documents; and failed to meet certain third-party expenses. The Condominium was placed under receivership on February 27, 2009. According to the AG's office, before the Condominium was placed in receivership, 72 Condominium units had been sold pursuant to the Offering Plan.

Mr. Levy and YL then commenced an action against the lender, claiming that it did not meet its lending obligations and urging, among other things, that the Condominium's managing agent Penmark had absconded with the PILOT funds when it feared that it would not be paid its management fees. In January 2010, the lender's motion to dismiss respondents' complaint was granted, and the lender was granted summary judgment in its foreclosure action. Penmark was ultimately replaced as the Condominium board's managing agent.

Meanwhile, respondents attempted to file a 10th amendment, apparently in or about April 2008, which recited, among other things, that respondents had contributed a total of

$1,597,932.41 to the reserve fund as of the end of April 2009, but had withdrawn a total of $1,597,773.56 from it, "and ha[d] used such funds for construction of the building." The proposed amendment also revealed that the January 1, 2009 PILOT had not been paid, and that it was being disputed in the lender's foreclosure action. Neither that proposed amendment, nor any prior one, specifically indicated that respondents were taking a credit against the Mandatory Initial Contribution, nor did any amendment or proposed amendment set forth any capital replacements or their actual or estimated costs.

Some time before the end of July 2009, the AG's office started an investigation into respondents' conduct, including, evidently, requisitioning the reserve fund bank account records, and records relating to a payroll account and an operating account of an entity called YL Management, LLC. Mr. Levy, Daniel Deutsch (Mr. Levy's son-in-law), and other members of Mr. Levy's family had signatory power over these latter two accounts. According to petitioner, as supported by the reserve fund's and the operating fund's monthly statements, monies were withdrawn from the reserve fund account and deposited into the operating account,[5] and some payments from the latter account were seemingly used for purposes other than for the Condominium's capital replacements. These included payments of Macy's and American Express credit card bills; payments personally to Mr. Levy and his family, including to Mr. Deutsch; and payments to Staples, Verizon Wireless, and the Oxford Health Plan. A review of the reserve fund's monthly statements from April 2008 through February 2009 reveals that, for the most part, monies deposited each month into that account were largely withdrawn by the end of that month; that no funds were deposited into the account after November 26, 2008; and that, at the end of February 2009, only $70 remained in the account.

[5] Funds from other sources had also been deposited into the operating account.

On July 30, 2010, the AG's office accepted for filing respondents' tenth proposed Offering Plan amendment, after certain corrections and deletions required by the AG's office were made, including the deletion of respondents' claim that the money it had withdrawn from the reserve fund had been used to construct the building. However, shortly before the tenth amendment was accepted, the AG initiated this proceeding against respondents.

The petition alleges eight causes of action against respondents. The first through third causes of action are premised on Executive Law § 63(12), which permits the AG to seek injunctive and monetary relief whenever a person has been engaged in repeated illegal or fraudulent acts or has "otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transaction of business." Under that statute the term "fraud" includes a scheme to defraud as well as "any deception, misrepresentation, concealment, suppression, false pretense, promise or unconscionable contract provision." Id. The term "persistent," as it relates to fraud and illegality, includes "continuance or carrying on of any fraudulent or illegal act or conduct," and the term "repeated" includes "repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person." Id.

The AG's first cause of action alleges that respondents fraudulently failed to fund the reserve fund as represented in the Offering Plan, failed to disclose that they would raid the reserve fund of its subsequent contributions, and fraudulently failed to make the January 1, 2009 PILOT, and that such acts constituted repeated fraudulent acts and persistent fraud or illegality in conducting a business under Executive Law § 63(12). The second cause of action alleges that

respondents' repeated violations of Local Law 70, in failing to fund the reserve fund as represented in the Offering Plan and in raiding that fund, constituted repeated illegal acts and persistent illegality in conducting a business under Executive Law § 63(12). The third cause of action alleges that respondents' repeated violations of the Martin Act amounted to illegal acts and persistent illegality in conducting a business in violation of Executive Law § 63(12).

The fourth through seventh causes of action are allegations of direct violations of the Martin Act. The Martin Act governs the offer and sale of securities, including condominiums, and permits the AG to investigate and commence an action for injunctive and monetary relief when the AG believes, from the evidence, that a person or entity has engaged in, or is about to engage in, fraudulent practices under Article 23-A of the General Business Law. See General Business Law §§ 352(1) and 353. "Fraudulent practices" include "any deception, misrepresentation, concealment, suppression, fraud, false pretense or false promise" in the sale of securities, such as condominiums. General Business Law § 352(1). Under the Martin Act, it is illegal to use any "fraud, deception, concealment [or] suppression . . . ," or to make a false statement, when the statement's maker "(i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made . . . ." General Business Law §§ 352-c(1)(a) and (c). The Martin Act also sets forth the information which a condominium offering plan must contain; empowers the AG to promulgate rules and regulations in that regard; and requires the offeror to provide information prescribed by the AG in order to give prospective purchasers adequate information upon which to form a judgment. General Business Law §§ 352-e(1)(b) and 352-e(6). Pursuant to that

authority, the AG has promulgated the regulations governing offering plans for occupied condominiums, which are set forth in Part 23 of Title 13 of the N.Y.C.R.R.

The AG's fourth cause of action alleges that respondents' failure to disclose in the Offering Plan and its amendments that they did not properly fund the reserve fund, their raid on the fund, and their failure to make the January 2009 PILOT constituted fraudulent practices under the Martin Act. The fifth cause of action alleges that, while they were engaged in selling and offering units in the Condominium, respondents, in violation of the Martin Act, did not disclose in the Offering Plan and its amendments their failure to properly fund the reserve fund, their raid on that fund, and their failure to meet the January 2009 PILOT. The sixth cause of action asserts that respondents' misrepresentations in the Offering Plan, that they would fund the reserve fund, as per the plan's requirements, and meet PILOT obligations with respect to unsold units, constituted violations of the Martin Act. Under the seventh cause of action, the AG alleges that respondents' failure to amend the Offering Plan to timely disclose that they did not deposit the Mandatory Initial Contribution into the reserve fund and that they withdrew subsequent contributions to the reserve fund constituted violations under the Martin Act.

Finally, under the eighth cause of action, the AG asserts that respondents violated General Business Law § 349, a consumer protection statute which declares unlawful deceptive acts and practices in the conduct of any business in the state and permits the AG to enjoin such acts and obtain restitution of money or property so obtained. In particular, the AG claims that each of 72 Condominium unit purchases, made pursuant to the Offering Plan, was a consumer transaction; that

respondents' conduct in connection with those sales transactions was misleading, because respondents concealed that they had failed to fund the reserve fund as the law required; and that respondents engaged in deceptive practices in the sale and advertisement of the units.

As a result, the AG seeks, under the first through eighth causes of action, restitution and/or damages of $7,399,145, the amount that it is claimed that respondents should have placed in the reserve fund, minus the $70 which was left unspent in the reserve fund account; under the fourth through seventh causes of action, a judgment permanently enjoining respondents from directly or indirectly engaging in any business activity involving the sale, offer, or advertisement of securities in this state; under the first through seventh causes of action, a judgment permanently enjoining respondents from further engaging in the alleged fraudulent, unlawful, and deceptive acts; on the eighth cause of action, penalties of $360,000.00 under General Business Law § 350-d ($5,000 for each of the 72 unit sales); on all causes of action, from each respondent, a discretionary allowance, in the amount of $2,000, pursuant to C.P.L.R. § 8303(a)(6); and costs and disbursements.

Respondents' verified answer consists of a broad denial of the AG's eight causes of action and five enumerated affirmative defenses, with absolutely no statements from any person with knowledge of the facts. In reply, petitioner argues that the court should reject the answer, as respondents have submitted no evidence that contradicts the petition or the earlier findings of the court in the November 2010 Decision. Petitioner maintains that once a petitioner submits evidence in a special proceeding to support its claim, the burden shifts to the respondent to present evidence sufficient to raise triable issues of fact, which petitioner argues respondents failed to present.

The supplemental documents that respondents submitted on Motion Sequence Number 005 consist of copies of documents regarding the foreclosure sale of the Condominium on November 17, 2010, and a CD-ROM containing sixty-five multi-page scanned documents. Most of the scanned documents appear to be work orders and invoices for work performed on the Condominium, together with summaries of these documents prepared by an unknown person. Additionally, within a file titled "YL Bank Stmts 1," there are two one-page scanned affidavits, both dated September 21, 2010, from a person named Scott Ackerman, who sets forth that he is a member of Wagner, Ferber, Fine & Ackerman, PLLC ("WFFA"). In one document, Mr. Ackerman sets forth that WFFA are the accountants for Mr. Levy and an entity referred to as YL Management LLC ("YL Management"). WFFA reviewed the general ledger and intercompany accounts of the YL Management and YL for 2008. During their review, WFFA found that $1,597,773.56 from the sale of condominium units was deposited into YL Management, which then made net transfers back to YL totaling $1,054,747.98. Additionally, Mr. Levy and his related entities made net transfers of $911,611.07 into YL. The net total of $1,966,359.05, Mr. Ackerman states, is more than the $1,597,773.56 that should have been deposited into YL originally. In the other September 21, 2010 document, Mr. Ackerman sets forth that WFFA reviewed YL's books and "in as much as the conversion required substantial renovations and capital improvements . . . [WFFA] have been asked to set forth those items of construction work, both soft and hard costs, that were undertaken by [YL] in connection with the Building conversion." Mr. Ackerman sets forth that the books show actual construction costs and capital improvements exceeding $4.3 million, most of which work was started before February 15, 2008.

The court evaluates special proceedings under the same standards that apply to summary judgment motions. People by Abrams v. D.B.M. Int'l Photo Corp., 135 A.D.2d 353, 354 (1st Dep't 1987). Petitioner must tender evidentiary proof, in admissible form, sufficient to "warrant the court as a matter of law in directing judgment in [his] favor . . . ." C.P.L.R. Rule 3212(b). Unsupported allegations or those with insufficient or inadmissible proof will not serve to establish a prima facie case. Only after the petitioner submits evidence establishing its claim does the burden shift to the respondent to come forward with evidence raising a triable issue of fact.

Petitioner has submitted evidence sufficient to establish the claims in the petition. Respondent has failed to raise a triable issue of fact. Conclusory denials are insufficient to raise a triable issue of fact. Similarly, unsupported, bald affirmative defenses are accorded no weight. Aside from the bare denials asserted in the verified answer, there is not one scintilla of evidence submitted with the answer to contradict or challenge the petition. The documents submitted in the supplemental filing are without probative value as, for the most part, they are disorganized, vague, presented without any context, and unaccompanied by any affidavit of a person with knowledge of the facts. Respondents' attorney contends that the documents show that the reserve fund was properly set up and that the monies were used exclusively for the proper and authorized purposes. There is not one statement from a person with knowledge explaining the discrepancies in the reserve fund as illustrated in the petition or addressing the failure to pay the January 2009 PILOT as set forth in the Offering Plan. Counsel's vague protestations that the reserve fund was used properly are unavailing under these circumstances, since counsel lacks personal knowledge of the facts. Foley v. Haffmeister, 156 A.D.2d 541, 543 (2d Dept 1989).

In the reply papers in further support of Motion Sequence Number 005, counsel for respondents sets forth that the supplemental documents are submitted "simply . . . to provide the court with the very documents that Petitioner has already been provided with." He contends that the determination of the probative value of these documents is for the court to decide, and that "the documents speak so clearly for themselves, even without the affidavits by the accountant of respondent." First, it is not the court's obligation to ferret out respondents' defenses. Moreover, the accountants' affidavits are wholly deficient, as they fail to address or substantively rebut any of the claims in the petition and only serve to further obfuscate the truth by indicating that respondents were moving around money to various accounts without regard to their legal obligations to establish and maintain the reserve fund. There is no explanation as to why the reserve fund is virtually empty at only $70; no explanation as to how the scanned work orders and bills demonstrate capital replacements (see Administrative Code §§ 26-702 and 703); no clarification as to when these alleged capital replacements were actually made, not just paid; no explanation why as to why more money was withdrawn from the reserve account than would be permissible under section 26-703 or the Offering Plan; and no explanation as to the failure to pay the January 2009 PILOT. Accordingly, it is hereby

ORDERED that Motion Sequence Number 005 is granted; and it is further

ORDERED that the petition is granted in its entirety. Settle judgment on notice.

Dated: May 25, 2011

ENTER:

JOAN B. LOBIS, J.S.C.