

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

In the Matter of the Application of

WESTVIEW TASKFORCE, INC. and JANET M. SHEA,
YADIRA CERRATO, HIRAM JACOBS, VIRGINIA
CHAMBERS and PETER ALBER, on behalf of Westview
Taskforce, Inc., the official Tenants' Association for the
buildings located at 595 and 696 Main Street, Roosevelt
Island,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

-against-

THE STATE OF NEW YORK DIVISION OF HOUSING
AND COMMUNITY RENEWAL, ASSISTANT
COMMISSIONER RICHMOND MCCURNIN and
NORTHTOWN PHASE III ASSOCIATES, LP and NORTH
TOWN PHASE III HOUSES, INC.,

Respondents.

Index No. 113635/09

**AFFIDAVIT OF
MARC B. FREEDMAN,
C.P.A.**

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK)

MARC B. FREEDMAN, C.P.A., first being duly sworn, deposes and says:

1. I am a certified public accountant licensed by the State of New York since November 26, 1982. I am a member of the New York State Society of Certified Public Accountants and the American institute of Certified Public Accountants (AICPA) and as such have participated in the AICPA's peer review program, getting unqualified opinions, since 1994.
2. I have performed three related engagements for the Westview Taskforce, Inc.

3. First, in the summer of 2008, in connection with a rent increase application, I prepared projected budgets for Westview using the formats of Westview's Housing Company and the New York State Division of Housing and Community Development ("DHCR"). Pursuant to the application, these projection covered the budget years ending December 31, 2008 and December 31, 2009. My budgets were based on an analysis of the previous four years of audited financial statements provided to me by the Housing Company and DHCR. As part of the Budget Rent Determination process for the pending rent increase application, I testified at a DHCR hearing with regard to the budgets I prepared.
4. Second, in December of 2008, I prepared a response to a submission by the Housing Company to the DHCR.
5. Third, in the summer of 2009, I updated my earlier projected budget by incorporating Westview's most recent (2008) audited financial statements.
6. In my opinion, as I previously wrote on August 26, 2008, "a rent increase of \$1.52 per room per month should be sufficient to cover both the operating budget and the budget for Capital Expenditures and Extraordinary Maintenance items and add an additional \$336,000 to the replacement reserve..."
7. Additionally, as I previously wrote on July 1, 2009 "we estimate that no rent increase should be necessary to cover both the operating budget and the budget for Capital Expenditures and extraordinary Maintenance items (amortized over 4 years) maintaining the replacement reserve at \$1,097,141 at June 30, 2010."

8. The accuracy of my projections was borne out by the fact that the audited financial statements for the year ended December 31, 2008 were substantially similar to the projections I made in the summer of 2008. My projections were far more accurate than that of either the Housing Company or DHCR.
9. In fact, the audited financial statements confirmed my projection that income and expenses at Westview for the year ended December 31, 2008 would not produce a deficit. The multi-million dollar deficit projected by the Housing Company and DHCR did not materialize.
10. DHCR's final budget for Westview, upon which the recent rent increase was based, is substantially inaccurate in two significant areas
11. The first area in which DHCR's final budget is substantially inaccurate is with respect to interest arrears. DHCR's budget includes \$163,800 for "interest arrears" funding exclusively in the second year of the budget; however, according to the audited financial statements, the Housing Company only needs to make payments of principle and interest on the arrearage notes "to the extent there is excess project cash" (Note 4 to 2008 financial statements, page 18.) According to this note, "the Housing Company has not paid any principle or interest on the Mortgage Payable-Deferred Principle Arrears as the Project has not generated any Excess Project Cash." This item, which by itself accounted for over 16% of the DHCR's proposed rent increase, should not have been included in their budget.
12. I have been made aware of the argument by DHCR that, because interest arrears had been funded in prior budget years (although they were never paid), the inclusion of

interest arrears in Westview's projected expenses was not be responsible for the rent increase. That is plainly wrong. Westview's rents are set so its projected income meets its projected expenses. If an improper expense item is included in a budget that projects a deficit, then the inclusion of the improper expense would be responsible, in part, for any rent increase that is implemented to close the projected deficit.


13. The second area in which DHCR's final budget is substantially inaccurate is with respect to its inclusion of \$686,200 in expenses as "provision for replacement-net." This amount should not be included in the budget for two reasons. First, it is based on an engineering report over ten years old which no longer accurately relates to the needs of the building. Secondly, it does not take into account items deducted as expenses in the operating budget which, according to the audited financial statements, are properly credited to the replacement reserve. Eliminating this item and instead amortizing the costs of the budget for Capital Expenditures and Extraordinary Maintenance items prepared by DHCR over four years, as we have done in our proposed budget, would eliminate the need for any rent increase.

14. As my reports of both August 26, 2008 and July 1, 2009 stated, the Housing Company removed over \$1,000,000 from Westview through its warehousing of apartments. The amount is based on the audited financial statements. According to these audited statements the "Vacancy loss- (Apts. available for Occupancy)" was as

follows:

2004	\$62,845
2005	\$321,132
2006	\$503,514
2007	\$401,718
2008	\$44,705

2005, 2006 and 2007 were the years of apartment warehousing. If one assumes an average actual vacancy loss of \$60,000 (34% more than the actual loss in 2008) the loss from the warehousing of apartments was \$1,036,364. It is my opinion that this amount should be reimbursed to Westview.



Marc B. Freedman, C.P.A.

Sworn to before me this 20 day of January, 2010



Notary Public

LOIS E. ZURITA
Notary Public, State of New York
No. 01274400335 Nassau County
Certificate filed in New York County
Commission Expires July 30, 2013