

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

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LANDMARK WEST! INC., 91 CENTRAL :
PARK WEST CORPORATION and THOMAS :
HANSEN, :

Index No. 650354-08

Petitioners,

**VERIFIED ANSWER OF
RESPONDENT TRUSTEES OF
CONGREGATION SHEARITH ISRAEL**

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

-against-

CITY OF NEW YORK BOARD OF :
STANDARDS AND APPEALS, NEW YORK :
CITY PLANNING COMMISSION, HON. :
ANDREW CUOMO, as Attorney General of the :
State of New York, and CONGREGATION :
SHEARITH ISRAEL, also described as the :
Trustees of Congregation Shearith Israel, :

Respondents.

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Respondent Trustees of Congregation Shearith Israel (the “Congregation”), by its attorneys, Proskauer Rose LLP, as and for its answer to the Second Amended Verified Petition (the “Petition”) of Petitioners Landmark West! Inc., 91 Central Park West Corporation, and Thomas Hansen (“Petitioners”), states as follows:

1. The Congregation states that no response is required to paragraph 1 of the Petition, which purports to set forth the nature of the action, and that, to the extent a response is required, denies the allegations in paragraph 1.

2. The Congregation states that no response is required to paragraph 2 of the Petition, which purports to set forth General City Law, and that, to the extent a response is required, denies the allegations in paragraph 2.

3. The Congregation denies the allegations in paragraph 3 of the Petition.

4. The Congregation denies the allegations in paragraph 4 of the Petition.

5. The Congregation denies the allegations in paragraph 5 of the Petition.

6. The Congregation denies the allegations in paragraph 6 of the Petition.

7. The Congregation denies the allegations in paragraph 7 of the Petition.

8. The Congregation is without knowledge or information sufficient to form a belief as to the allegations in paragraph 8 of the Petition.

9. The Congregation states that as the allegations in paragraph 9 of the Petition have been “intentionally omitted,” no response is required and that, to the extent a response is required, denies any allegations therein.

10. The Congregation states that as the allegations in paragraph 10 of the Petition have been “intentionally omitted,” no response is required and that, to the extent a response is required, denies any allegations therein.

11. The Congregation is without knowledge or information sufficient to form a belief as to the allegations in paragraph 11 of the Petition.

12. The Congregation is without knowledge or information sufficient to form a belief as to the allegations in paragraph 12 of the Petition.

13. The Congregation states that no response is required to paragraph 13 of the Petition, which purports to set forth legal conclusions as to the Board of Standard and Appeals’ authority, and that, to the extent a response is required, denies the allegations in paragraph 13.

14. The Congregation states that no response is required to paragraph 14 of the Petition, which purports to set forth legal conclusions as to the New York City Planning Commission's responsibilities and Petitioners' purpose in naming that respondent, and that, to the extent a response is required, denies the allegations in paragraph 14.

15. The Congregation denies the allegations in paragraph 15 of the Petition, except admits that Hon. Andrew Cuomo, as Attorney General of the State of New York, is named in the Petition.

16. The Congregation denies the allegations in paragraph 16 of the Petition.

17. The Congregation denies the allegations in paragraph 17 of the Petition.

18. The Congregation states that as the allegations in paragraph 18 of the Petition have been "intentionally omitted," no response is required and that, to the extent a response is required, denies any allegations therein.

19. The Congregation states that as the allegations in paragraph 19 of the Petition have been "intentionally omitted," no response is required and that, to the extent a response is required, denies any allegations therein.

20. The Congregation is without knowledge or information sufficient to form a belief as to the allegations in paragraph 20 of the Petition.

21. The Congregation is without knowledge or information sufficient to form a belief as to the allegations in paragraph 21 of the Petition.

22. The Congregation is without knowledge or information sufficient to form a belief as to the allegations in paragraph 22 of the Petition.

23. The Congregation denies the allegations in paragraph 23 of the Petition.

24. The Congregation denies the allegations in paragraph 24 of the Petition.

25. The Congregation denies the allegations in paragraph 25 of the Petition.

26. The Congregation states that no response is required to paragraph 26 of the Petition, refers the Court to Section 666 of the New York City Charter for a complete and correct statement of its contents, and, to the extent a response is required, denies the allegations in paragraph 26.

27. With respect to the allegations in paragraph 27 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 27 as an incomplete recitation of the record.

28. With respect to the allegations in paragraph 28 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 28 as an incomplete recitation of the record.

29. With respect to the allegations in paragraph 29 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 29 as an incomplete recitation of the Resolution.

30. The Congregation states that no response is required to paragraph 30 of the Petition, which sets forth legal conclusions as to the New York City Charter, refers the Court to the

Charter for a true and correct statement of its contents, and that, to the extent a response is required, denies the allegations in paragraph 30.

31. The Congregation is without knowledge or information sufficient to form a belief as to the allegations in paragraph 31 of the Petition.

32. The Congregation denies the allegations in paragraph 32 of the Petition.

33. With respect to the allegations in paragraph 33 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 33 as an incomplete recitation of the record.

34. With respect to the allegations in paragraph 34 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 34 as an incomplete recitation of the record.

35. With respect to the allegations in paragraph 35 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 35 as an incomplete recitation of the record.

36. With respect to the allegations in paragraph 36 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent

a response is deemed required, denies the allegations in paragraph 36 as an incomplete recitation of the record.

37. With respect to the allegations in paragraph 37 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 37 as an incomplete recitation of the record.

38. The Congregation denies the allegations in paragraph 38 of the Petition.

39. With respect to the allegations in paragraph 39 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 39 as an incomplete recitation of the record.

40. With respect to the allegations in paragraph 40 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 40 as an incomplete recitation of the record.

41. With respect to the allegations in paragraph 41 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 41 as an incomplete recitation of the record.

42. With respect to the allegations in paragraph 42 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 42 as an incomplete recitation of the record.

43. The Congregation denies the allegations in paragraph 43 of the Petition.

44. With respect to the allegations in paragraph 44 of the Petition, the Congregation directs the Court to the record and Resolution, which speak for themselves, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 44 as an incomplete recitation of the record and Resolution.

45. With respect to the allegations in paragraph 45 of the Petition, the Congregation directs the Court to the record and Resolution, which speak for themselves, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 45 as an incomplete recitation of the record and Resolution.

46. With respect to the allegations in paragraph 46 of the Petition, the Congregation directs the Court to the record and Resolution, which speak for themselves, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 46 as an incomplete recitation of the record and Resolution.

47. With respect to the allegations in paragraph 47 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of

the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 47 as an incomplete recitation of the record.

48. The Congregation states that no response is required to paragraph 48 of the Petition, which purports to set forth legal conclusions as to the Board of Standard and Appeals' authority, and that, to the extent a response is required, denies the allegations in paragraph 48.

49. With respect to the allegations in paragraph 49 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 49 as an incomplete recitation of the record.

50. With respect to the allegations in paragraph 50 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 50 as an incomplete recitation of the record.

51. With respect to the allegations in paragraph 51 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 51 as an incomplete recitation of the record and Resolution.

52. The Congregation denies the allegations in paragraph 52 of the Petition.

53. The Congregation denies the allegations in paragraph 53 of the Petition.

54. With respect to the allegations in paragraph 54 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 54 as an incomplete recitation of the record.

55. With respect to the allegations in paragraph 55 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 55 as an incomplete recitation of the record.

56. With respect to the allegations in paragraph 56 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 56 as an incomplete recitation of the record.

57. With respect to the allegations in paragraph 57 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 57 as an incomplete recitation of the record.

58. With respect to the allegations in paragraph 58 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the

extent a response is deemed required, denies the allegations in paragraph 58 as an incomplete recitation of the Resolution.

59. The Congregation denies the allegations in paragraph 59 of the Petition.

60. The Congregation denies the allegations in paragraph 60 of the Petition.

61. The Congregation denies the allegations in paragraph 61 of the Petition.

62. The Congregation denies the allegations in paragraph 62 of the Petition.

63. The Congregation denies the allegations in paragraph 63 of the Petition.

64. The Congregation denies the allegations in paragraph 64 of the Petition.

65. The Congregation denies the allegations in paragraph 65 of the Petition.

66. The Congregation denies the allegations in paragraph 66 of the Petition.

67. The Congregation denies the allegations in paragraph 67 of the Petition.

68. With respect to the allegations in paragraph 68 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 68 as an incomplete recitation of the Resolution.

69. The Congregation denies the allegations in paragraph 69 of the Petition.

70. With respect to the allegations in paragraph 70 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 70 as an incomplete recitation of the Resolution.

71. With respect to the allegations in paragraph 71 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 71 as an incomplete recitation of the Resolution.

72. The Congregation denies the allegations in paragraph 72 of the Petition.

73. The Congregation denies the allegations in Paragraph 73 of the Petition.

74. The Congregation states that no response is required to paragraph 74 of the Petition, which purports to set forth legal conclusions as to the requirements for a variance, and that, to the extent a response is required, denies the allegations in paragraph 74.

75. The Congregation states that no response is required to paragraph 75 of the Petition, which purports to set forth legal conclusions as to the New York City Zoning Resolution, and that, to the extent a response is required, denies the allegations in paragraph 75.

76. The Congregation states that no response is required to paragraph 76 of the Petition, which purports to set forth legal conclusions as to the New York City Zoning Resolution, and that, to the extent a response is required, denies the allegations in paragraph 76.

77. The Congregation denies the allegations in Paragraph 77 of the Petition.

78. The Congregation denies the allegations in Paragraph 78 of the Petition.

79. With respect to the allegations in paragraph 79 of the Petition, the Congregation directs the Court to the Resolution and cited authorities, which speak for themselves, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 79 as an incomplete recitation of the Resolution and authorities.

80. With respect to the allegations in paragraph 80 of the Petition, the Congregation directs the Court to the Resolution and cited authorities, which speak for themselves, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 80 as an incomplete recitation of the Resolution and authorities

81. The Congregation denies the allegations in paragraph 81 of the Petition.

82. The Congregation states that no response is required to paragraph 82 of the Petition, which purports to set forth legal conclusions as to the Board of Standards and Appeals' authority, and that, to the extent a response is required, denies the allegations in paragraph 82.

83. The Congregation denies the allegations in paragraph 83 of the Petition.

84. The Congregation denies the allegations in paragraph 84 of the Petition.

85. The Congregation denies the allegations in paragraph 85 of the Petition.

86. The Congregation denies the allegations in paragraph 86 of the Petition.

87. With respect to the allegations in paragraph 87 of the Petition, the Congregation directs the Court to the record and Resolution, which speak for themselves, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 87 as an incomplete recitation of the record and Resolution.

88. With respect to the allegations in paragraph 88 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 88 as an incomplete recitation of the Resolution.

89. With respect to the allegations in paragraph 89 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 89 as an incomplete recitation of the Resolution.

90. With respect to the allegations in paragraph 90 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 90 as an incomplete recitation of the Resolution.

91. With respect to the allegations in paragraph 91 of the Petition, the Congregation directs the Court to the Resolution, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 91 as an incomplete recitation of the Resolution.

92. The Congregation states that no response is required to paragraph 92 of the Petition, which purports to set forth Section 74-711 of the New York City Zoning Resolution, and that, to the extent a response is required, denies the allegations in paragraph 92.

93. With respect to the allegations in paragraph 93 of the Petition, the Congregation directs the Court to the record, which speaks for itself, for a full and complete recitation of the contents thereof, and states that no response is required to those allegations and that, to the extent a response is deemed required, denies the allegations in paragraph 93 as an incomplete recitation of the record.

94. The Congregation states that no response is required to paragraph 94 of the Petition, which purports to set forth legal conclusions about the New York City Charter, and that, to the extent a response is required, denies the allegations in paragraph 94.

95. The Congregation states that it is not required to respond to those allegations in paragraph 95 of the Petition that purport to state legal conclusions about the General City Law, the Charter and the New York City Zoning Resolution, and that, to the extent a response is required, denies the allegations therein as to which a response is required.

96. The Congregation denies the allegations in paragraph 96 of the Petition.

97. The Congregation denies the allegations in paragraph 97 of the Petition.

98. The Congregation states that no response is required to paragraph 98 of the Petition, which purports to set forth the nature of the action, and that, to the extent a response is required, denies the allegations in paragraph 98.

99. The Congregation denies the allegations in paragraph 99 of the Petition.

100. The Congregation states that no response is required to paragraph 100 of the Petition, which repeats all prior allegations, and that, to the extent a response is required, denies the allegations in paragraph 100.

101. The Congregation denies the allegations in paragraph 101.

102. The Congregation denies the allegations in paragraph 102.

DEFENSES AND AFFIRMATIVE DEFENSES

Each of the following Defenses and Affirmative Defenses is directed to all allegations of the Petition. Respondent Congregation sets forth the following matters to inform Petitioners of certain potentially applicable defenses. By listing any matter as an affirmative defense,

Respondent Congregation does not assume the burden of proving matters upon which Petitioners bear the burden of proof under law.

AS AND FOR A STATEMENT OF MATERIAL AND PERTINENT FACTS

1. The Board of Standards and Appeals held public hearings on Respondent Congregation's variance application for the proposed construction of a nine story and cellar mixed-use community facility/residential building on November 27, 2007, February 12, 2008, April 15, 2008, and June 24, 2008.

2. At the hearings, various people spoke in favor of, and in opposition to, the Respondent Congregation's proposed plans.

3. On August 26, 2008, the Board of Standards and Appeals unanimously voted in favor of granting the variance, and articulated the rationale for its determination in an 18-page Resolution.

4. The Board of Standards and Appeals' determination had a rational basis, was not arbitrary and capricious, and therefore cannot be set aside.

AS AND FOR A FIRST DEFENSE

5. The Petition, in whole or in part, fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE

6. Judicial review under Article 78 is very limited. The Court may not substitute its judgment for that of the New York City Board of Standards and Appeals except to the extent that the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious. The New York City Board of Standards and Appeals'

determination was fully supported by the record and was not arbitrary, capricious or an abuse of discretion.

AS AND FOR A THIRD DEFENSE

7. Petitioners' claims are barred, in whole or in part, by the applicable statutes of limitation and/or filing periods and/or laches.

AS AND FOR A FOURTH DEFENSE

8. Petitioners' claims are barred, in whole or in part, by the doctrines of waiver and/or estoppel.

AS AND FOR A FIFTH DEFENSE

9. Petitioners have not suffered damages or any ascertainable loss; nor, had Petitioners suffered damages, have they made any efforts to mitigate them.

AS AND FOR A SIXTH DEFENSE

10. Petitioners have no standing to bring this action.

AS AND FOR A SEVENTH DEFENSE

11. Petitioners' claims are not currently ripe for adjudication.

AS AND FOR AN EIGHTH DEFENSE

12. Petitioners have failed to exhaust all administrative remedies.

AS AND FOR A NINTH DEFENSE

13. Respondent Congregation reserves the right to assert any and all additional legal and/or equitable defenses based on discovery or further factual investigation in this case.

WHEREFORE, Respondent Congregation respectfully requests that the Court issue an award dismissing the Petition in its entirety, with prejudice, for attorney's fees and costs; and for such other further relief as the Court may deem just and proper.

Dated: New York, New York
May 14, 2009

PROSKAUER ROSE LLP

By: 

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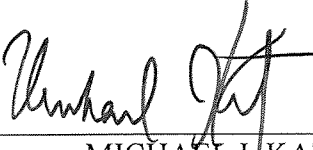
Attorneys for Respondent Congregation Shearith Israel

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)


MICHAEL I. KATZ, being duly sworn, deposes and says:

I am an officer of the Trustees of Congregation Shearith Israel, a respondent in the above-entitled proceeding. I have read the foregoing Verified Answer and know the contents thereof; the same is true to my knowledge, based on my review of Congregation Shearith Israel's records, information provided to me by other members of the Board of Trustees, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.



MICHAEL I. KATZ

Sworn to me this 14th
day of May, 2009



Notary Public
RAYMOND S. SCHNECK
Notary Public, State of New York
No. 41-4872835
Qualified in Queens County
Commission Expires October 6, 2010