

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	File No. WC-2010-0227
	)	
Aspen Woods Apartment Associates, L.L.C.,	)	
Barry Howard, Aspen Woods Apartments, Sapal	)	
Associates, Sachs Investing Co., Michael Palin,	)	
Jerome Sachs, and National White & Power, Inc.	)	
	)	
Respondents.	)	

**RESPONDENTS SAPAL ASSOCIATES, SACHS INVESTING CO., MICHAEL PALIN  
AND JEROME SACHS' MOTION TO DISMISS**

COME NOW Respondents Sapal Associates, Sachs Investing Co., Michael Palin and Jerome Sachs (collectively "Former Apartment Non-Owners"),<sup>1</sup> by and through their undersigned attorneys, and pursuant to 4 CSR 240-2.070(6), move to dismiss the Complaint in the above-captioned matter for failure to state a claim upon which relief may be granted. In support of their Motion, Former Apartment Non-Owners state as follows:

1. On or about January 29, 2010, the Staff of the Missouri Public Service Commission ("Staff") filed a complaint ("Complaint") with the Missouri Public Service Commission ("Commission") against Aspen Woods Apartment Associates, L.L.C., and Barry

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<sup>1</sup> As discussed below, this group of Respondents were never owners of the Apartment buildings at issue. They held interests in various business organizations associated in certain ways with the Apartment buildings for a period of time. However, the Apartment buildings were conveyed to an unrelated buyer by deed recorded on 2/11/03. None of this group of Respondents, nor any of these associated business organizations has owned any interest in or exercised any control over the Apartment buildings since that date. The fictitious name of "Aspen Woods Apartments" registered with the Missouri Secretary of State has not been used by these Respondents or any of their related business organizations in Missouri since 2/11/03. Following the sale, the fictitious name registration was inadvertently not cancelled or withdrawn. This group of Respondents is not aware whether others used the fictitious name of Aspen Woods Apartments improperly since that time, but these Respondents have never provided any authority or consent to any use of the Aspen Woods Apartments fictitious name.

Howard (collectively "Apartment Respondents"), Aspen Woods Apartments, and the Former Apartment Non-Owners. *See* Order Giving Notice of Complaint and Directing Answer, dated February 2, 2010.

2. Nowhere in the Complaint does the Complainant specify which of the Apartment Respondents holds title to the Aspen Woods Apartments land and buildings. Complainant merely lumps Former Apartment Non-Owners in with the other Respondents, suggesting that the mere existence of an expired Registration of Fictitious Name can provide a basis for liability.

3. Former Apartment Non-Owners were named because they were listed on a Registration of Fictitious Name for Aspen Woods Apartments in the Missouri Secretary of State records. The Registration of Fictitious Name admittedly expired on August 28, 2009. *See* Complaint, ¶ 5.

4. Aspen Woods Apartments was the registered fictitious name for the apartment complex described in paragraph 12 of the Complaint ("Property"), when it was owned by Aspen Woods Apartments, LLC, a Delaware limited liability corporation ("Aspen Woods Apartments, LLC – DE") for a period of time ending February 11, 2003. *See* Former Apartment Non-Owners' Answer, ¶ 5.

5. Aspen Woods Apartments, LLC – DE was owned and managed Aspen Woods Apartments Co., a New York general partnership ("Aspen Woods Apartments Co."). *See* Former Apartment Non-Owners' Answer, ¶ 5.

6. Respondent Sapal Associates ("Sapal") was the general partner of Aspen Woods Apartment Co., but at no time did Sapal have any ownership in or exert any control over the Aspen Woods Apartments land and buildings. *See* Former Apartment Non-Owners' Answer, ¶ 6.

7. Respondent Sachs Investing Co. ("Sachs Investing") was the general partner of Sapal, but at no time did Sachs Investing have any ownership in or exert any control over the Aspen Woods Apartments land and buildings. *See* Former Apartment Non-Owners' Answer, ¶ 7.

8. Respondent Michael Palin ("Palin") was a general partner of Sachs Investing, but at no time did Palin have any ownership in or exert any control over the Aspen Woods Apartments land and buildings. *See* Former Apartment Non-Owners' Answer, ¶ 8.

9. Respondent Jerome Sachs ("Sachs") was a general partner of Sachs Investing, but at no time did Sachs have any ownership in or exert any control over the Aspen Woods Apartments land and buildings. *See* Former Apartment Non-Owners' Answer, ¶ 9.

10. Aspen Woods Apartments, LLC – DE sold the land and buildings encompassing Aspen Woods Apartments by deed recorded on February 11, 2003, to Aspen Apartments, LLC, an unrelated Missouri limited liability company. *See* Former Apartment Non-Owners' Answer, Exhibit 1.

11. The Aspen Woods Apartments fictitious name has not been used by either Aspen Woods Apartments Co. or Aspen Woods Apartments, LLC – DE since February 11, 2003. *See* Former Apartment Non-Owners' Answer, ¶ 5. That name was inadvertently not cancelled at that time and the Former Apartment Non-Owners have not provided any authority or consent to use of the Aspen Woods Apartments' fictitious name.

12. Neither the Complaint nor the exhibits attached thereto make any reference to any facts or actions taken specifically by the Former Apartment Non-Owners as owners or operators of the Aspen Woods Apartments property that leads to the Complainant being entitled to the relief sought against the Former Apartment Non-Owners. *See* Complaint, Exhibits B through E.

As a result, Former Apartment Non-Owners should be dismissed from this action since no allegation supporting relief is directed at them.

13. In the alternative, any action brought against Former Apartment Non-Owners under R.S.Mo. §§ 386.570 and 386.600 is time-barred by the statute of limitations set forth in R.S.Mo. § 516.390, which limits prosecution of an offense in which the State receives the applicable remedy to suits brought within two years of the commission of the offense. R.S.Mo. § 516.390 (2010). Any actions that Former Apartment Non-Owners may have taken with respect to the Property prior to the sale of the Property in 2003 falls outside of this two-year statute of limitations and therefore, the Former Apartment Non-Owners must be dismissed from this proceeding.

WHEREFORE, Respondents Sapal Associates, Sachs Investing Co., Michael Palin and Jerome Sachs respectfully request that the Commission dismiss the Complaint against them with prejudice, and for such other relief as the Commission deems just and proper.

Respectfully submitted,

**STINSON MORRISON HECKER LLP**

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Attorneys for Respondents Sapal Associates,  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served by U.S. mail, postage prepare, to the following parties this 12<sup>th</sup> day of March, 2010:

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