

**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' ANSWER**

COME NOW Respondents Sapal Associates, Sachs Investing Co., Michael Palin and Jerome Sachs (collectively "Former Apartment Non-Owners")¹ and for their Answer state to the Commission as follows:

1. Former Apartment Non-Owners deny the allegations of paragraph 1.
2. Former Apartment Non-Owners admit that § 386.390.1 is accurately quoted. The remainder of the allegations state legal conclusions to which no response is required. To the extent a response is required, the remaining allegations are denied.

¹ 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 Following the sale, the fictitious name registration was inadvertently not cancelled or withdrawn.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.

3. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 3, and therefore deny same.

4. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 4, and therefore deny same.

5. Former Apartment Non-Owners deny that Aspen Woods Apartments was ever a business entity, but rather state it was only a fictitious name. Former Apartment Non-Owners admit that at one time Aspen Woods Apartments was a fictitious name utilized by Aspen Woods Apartments, LLC, a Delaware limited liability corporation ("Aspen Woods Apartments, LLC – DE") through Aspen Woods Apartments Co., a New York general partnership ("Aspen Woods Apartments Co."), the owner and Manager of Aspen Woods Apartments, LLC – DE, for the operation of the Aspen Woods Apartments land and buildings referred to in the Complaint as "the Aspen Apartment Properties." Aspen Woods Apartments, LLC – DE held title to the Aspen Woods Apartment land and buildings until it sold the property by deed recorded on February 11, 2003, to Aspen Apartments, LLC, an unrelated entity. *See* Special Warranty Deed dated February 5, 2003 and filed February 11, 2003 ("Deed"), attached hereto as Exhibit 1. After February 11, 2003, neither Aspen Woods Apartments Co. nor Aspen Woods Apartments, LLC – DE had any ownership, interest in, or control over the Aspen Woods Apartment land and buildings, nor did they utilize the Aspen Woods Apartments fictitious name after that date. The Former Apartment Non-Owners had interests in entities related to those referenced, but none ever owned or operated the Aspen Woods Apartments.

6. Former Apartment Non-Owners deny that Respondent Sapal Associates ("Sapal") owns a 50 percent interest in Aspen Woods Apartments, but state that Sapal was the general partner in Aspen Woods Apartment Co. and admit the remaining allegations of paragraph 6.

7. Former Apartment Non-Owners deny that Respondent Sachs Investing Co. ("Sachs Investing") owns a 30 percent interest in Aspen Woods Apartments, but state that Sachs Investing was the general partner in Sapal and Sachs Investing admits the remaining allegations of paragraph 7.

8. Former Apartment Non-Owners deny that Respondent Michael Palin ("Palin") owns a 10 percent interest in Aspen Woods Apartments, or has ever had any ownership interest in or control over the Aspen Woods Apartments land and buildings, but Palin admits the remaining allegations of paragraph 8.

9. Former Apartment Non-Owners deny that Respondent Jerome Sachs ("Sachs") owns a 10 percent interest in Aspen Woods Apartments, or has ever had any ownership interest in or control over the Aspen Woods Apartments land and buildings, but Sachs admits the remaining allegations of paragraph 9.

10. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 10, and therefore deny same.

11. Complainant's use of the term "Apartment Respondents" includes parties unknown to Former Apartment Non-Owners, as they must have acquired interests in the Aspen Apartments land and buildings after February 11, 2003. To the extent a response is required, Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 11, and therefore deny same.

12. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 12, and therefore deny same.

13. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 13, and therefore deny same.

14. Former Apartment Non-Owners deny that they own, operate, manage and/or control the Aspen Apartments land and buildings, as the Aspen Woods Apartments land and buildings were sold by Aspen Woods Apartments, LLC – DE on February 11, 2003. Further, Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations as to the other "Apartment Respondents," and therefore deny same.

15. Former Apartment Non-Owners admit that § 386.020.60 is accurately quoted.

16. Former Apartment Non-Owners admit that § 386.020.59 is accurately quoted.

17. Former Apartment Non-Owners admit that § 386.020.50 is accurately quoted.

18. Former Apartment Non-Owners admit that § 386.020.49 is accurately quoted.

19. Former Apartment Non-Owners admit that § 386.020.43 is accurately quoted.

20. Former Apartment Non-Owners admit that § 386.020.48 is accurately quoted.

21. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 21, and therefore deny same.

22. Former Apartment Non-Owners state that Complainant's Exhibit B speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 22.

23. Former Apartment Non-Owners state that Complainant's Exhibit B speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 23.

24. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 24, and therefore deny same.

25. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 25, and therefore deny same.

26. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 26, and therefore deny same.

27. Former Apartment Non-Owners deny that they contract with Respondent NWP. Former Apartment Non-Owners lack knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 27, and therefore deny same.

28. Former Apartment Non-Owners state that Complainant's Exhibit C speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 28.

29. Former Apartment Non-Owners state that Complainant's Exhibit C speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 29.

30. Former Apartment Non-Owners state that Complainant's Exhibit C speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 30.

31. Former Apartment Non-Owners state that Complainant's Exhibit C speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 31.

32. Former Apartment Non-Owners state that Complainant's Exhibit C speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 32.

33. Former Apartment Non-Owners state that Complainant's Exhibit D speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 33.

34. Former Apartment Non-Owners state that Complainant's Exhibit E speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 34.

35. Former Apartment Non-Owners state that Complainant's Exhibit E speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 35.

36. Former Apartment Non-Owners state that Complainant's Exhibit E speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 36.

37. Former Apartment Non-Owners state that Complainant's Exhibit E speaks for itself. To the extent a further response is required, Former Apartment Non-Owners deny the allegations of paragraph 37.

38. Former Apartment Non-Owners hereby incorporate their responses to paragraphs 1 through 37.

39. Former Apartment Non-Owners deny the allegations of paragraph 39 to the extent they are applicable to Former Apartment Non-Owners. Former Apartment Non-Owners lack knowledge and information sufficient to form a belief about the truth of the remaining allegations of paragraph 39, and therefore deny same.

40. Former Apartment Non-Owners hereby incorporate their responses to paragraphs 1 through 39.

41. Former Apartment Non-Owners admit that § 393.170.1 is accurately quoted.

42. Former Apartment Owners admit that they do not possess a Certificate of Convenience and Necessity but deny that they have violated § 393.170. Former Apartment Non-

Owners lack knowledge and information sufficient to form a belief about the truth of the remaining allegations of paragraph 42, and therefore deny same.

43. Former Apartment Non-Owners admit that § 393.170.1 is accurately quoted.

44. Paragraph 44 states a legal conclusion to which no response is required. To the extent a response is required, Former Apartment Non-Owners deny the allegations of paragraph 44.

45. Former Apartment Non-Owners deny they have violated §§ 393.130.1 and 393.140(11). Former Apartment Non-Owners lack knowledge and information sufficient to form a belief about the truth of the remaining allegations of paragraph 45, and therefore deny same.

46. Paragraph 46 states a legal conclusion to which no response is required. To the extent a response is required, Former Apartment Non-Owners deny the allegations of paragraph 46.

47. Former Apartment Non-Owners hereby incorporate their responses to paragraphs 1 through 46.

48. Former Apartment Non-Owners admit that § 386.570 is accurately quoted.

49. Former Apartment Non-Owners admit that § 386.600 is accurately quoted.

50. All allegations not specifically admitted are hereby denied.

51. Complainant has failed to state a claim upon which relief can be granted as to Former Apartment Non-Owners. Sapal was the general partner in Aspen Woods Apartment Co., which owned and managed Aspen Woods Apartments, LLC – DE, the title holder to the Aspen Apartments land and buildings until February 11, 2003. Sachs Investing was the general partner in Sapal. Palin and Sachs never had any ownership interest in or control over the Aspen Woods

1

Apartments land and buildings. The Complaint fails to allege any action taken specifically by Former Apartment Non-Owners as owners of the Aspen Woods Apartments Properties that leads to Complainant being entitled to the relief sought, as Former Apartment Non-Owners never had any ownership in or exerted any control over the Aspen Woods Apartment Properties at any time. In the alternative, any action brought against the Former Apartment Non-Owners under R.S.Mo. §§ 386.570 and 386.600 is time-barred by the two-year statute of limitations set forth in R.S.Mo. § 516.390, as Former Apartment Non-Owners have had no involvement whatsoever relating to the Aspen Woods Apartments land and buildings since February 11, 2003. Former Apartment Non-Owners hereby incorporate their Motion to Dismiss filed simultaneously herewith.

WHEREFORE, Former Apartment Non-Owners respectfully request the Commission dismiss the Complaint with prejudice, and for such other relief as the Commission deems just and proper.

Respectfully submitted,

STINSON MORRISON HECKER LLP

By: /s/ Crystal K. Hall
John G. Young, Jr. #25701
Crystal K. Hall #60646
168 N. Meramec Ave., Suite 400
St. Louis, Missouri 63105
Telephone: (314) 863-0800
Facsimile: (314) 863-9288
jyoung@stinson.com
chall@stinson.com

Attorneys for Respondents Sapal Associates,
Sachs Investing Co., Michael Palin and
Jerome Sachs

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 12th day of March, 2010:

Jennifer Hernandez
General Counsel Office
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Michael Foote
Regulatory Corporate Counsel
NWP Services Corp.
22 Executive Park
Irvine, CA 92614

Lewis R. Mills, Jr.
Public Counsel
Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102

Lowell D. Pearson
Husch Blackwell Sanders LLP
235 East High Street, Suite 200
P.O. Box 1251
Jefferson City, MO 65102

/s/ Crystal K. Hall

BP14571/1820



* 2003021101779 *

**JANICE M. HAMMONDS, RECORDER OF DEEDS
ST. LOUIS COUNTY MISSOURI
41 SOUTH CENTRAL, CLAYTON, MO 63105**

TYPE OF
INSTRUMENT
WD

GRANTOR
ASPEN WOODS APARTMENTS

TO

GRANTEE
ASPEN APARTMENTS ETAL

PROPERTY
DESCRIPTION:

WESTCHESTER VILLGE PB 128 PG 30 W/O/P

Lien Number

Notation

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to the **TYPE OF INSTRUMENT**, the **NAMES of the GRANTOR and GRANTEE** as well as the **DESCRIPTION of the REAL PROPERTY** affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, **the ATTACHED DOCUMENT governs**. Only the **DOCUMENT NUMBER**, the **DATE** and **TIME** of filing for record, and the **BOOK** and **PAGE** of the recorded Document is taken from this **CERTIFICATION SHEET**.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

STATE OF MISSOURI)
SS.

COUNTY OF ST. LOUIS)

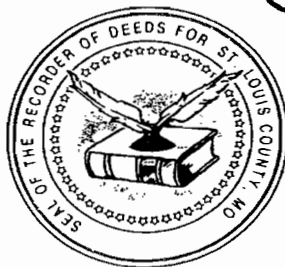
Document Number

1,779

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 5 pages, (this page inclusive), was filed for record in my office on the 11 day of February 2003 at 03:17 PM and is truly recorded in the book and at the page shown at the top and/or bottom of this page.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

John Reber
Deputy Recorder



Janice M. Hammonds
Recorder of Deeds
St. Louis County, Missouri

RECORDING FEE \$32.00
(Paid at the time of Recording)

Mail to:

Destination code: 3

P

B-14571 P-1820/1824

EXHIBIT

1

SPECIAL WARRANTY DEED

OLT 483340

THIS DEED, made and entered into as of this 5th day of FEBRUARY, 2003, by and between ASPEN WOODS APARTMENTS, LLC, a Delaware limited liability company ("Grantor"), party of the first part, and ASPEN APARTMENTS, L.L.C., a Missouri limited liability company; ASH APARTMENTS, INC., a Missouri corporation; NAN APARTMENTS, L.L.C., a Missouri limited liability company; MEADOWS APARTMENTS, L.C., a Missouri limited liability company; and SAND APARTMENTS, L.L.C., a Missouri limited liability company, as co-tenants (collectively, "Grantee"), all with a mailing address of 425 North New Ballas Road, St. Louis, Missouri 63141, party of the second part.

WITNESSETH: that the said party of the first part, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, does by these presents BARGAIN and SELL, and CONVEY and CONFIRM unto said party of the second part, the real estate situated in the County of St. Louis, State of Missouri as described on Exhibit A attached hereto and made a part hereof. Subject to the exception set forth on Exhibit B attached hereto and made a part hereof.

To Have and to Hold the same, together with all rights and appurtenances to the same belonging unto the said party of the second part and to its successors and assigns forever. The said party of the first part hereby covenants that is and its successors shall and will WARRANT and DEFEND the title to the premises unto the said party of the second part and its successors and assigns forever against the lawful claims of all persons claiming the same, or any part thereof, by, through and under Grantor, but not otherwise, excepting, however, the general taxes for the calendar year 2003 and thereafter, and the special taxed becoming a lien after the date of this deed.

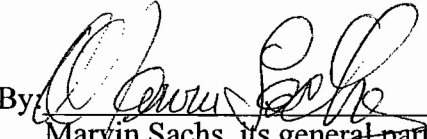
IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by all of its general partners as of the date and year first above written.

ASPEN WOODS APARTMENTS, LLC, a
Delaware limited liability company

By: Aspen Woods Apartments Co., a
New York general partnership
Its: Manager

By: SAPAL Associates, a New York
General Partnership, its general partner


By: Sachs Investing Co., a New
York General Partnership, its
general partner

By: 
Marvin Sachs, its general partner

STATE OF New York)
) SS.
COUNTY OF Queens)

On this 3rd day of February, 2003, before me personally appeared Marvin Sachs, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.


Notary Public

MARTHA PINON-INTRIAGO
Notary Public, State of New York
No. 41-4995659
Qualified in Queens County
Commission Expires April 27, 2006

File No.: 483340

Abstract No.:

EXHIBIT "A"

PARCEL 1:

The Eastern part of the subdivision known as WESTCHESTER VILLAGE, a subdivision in St. Louis County, Missouri, the plat of which is recorded in Plat Book 128 page 30 of the St. Louis County Records and being more particularly described as follows: Beginning at a point in the West line of New Halls Ferry Road 85 feet wide at its intersection with the North line of the subdivision of Westchester Village; thence along the West line of New Halls Ferry Road, South 33 degrees 52 minutes 17 seconds East 42.10 feet to a point and South 27 degrees 03 minutes East 704.81 feet to the Southeast corner of said subdivision; thence along the South line of said subdivision North 89 degrees 55 minutes 30 seconds West 638.41 feet to a point and South 89 degrees 54 minutes West 524.07 feet to a point; thence North 0 degrees 06 minutes West 130 feet to a point; thence South 89 degrees 54 minutes West 120 feet to a point; thence North 0 degrees 06 minutes West 531.73 feet more or less to a point in the North line of said Westchester Village; thence along said North line North 89 degrees 55 minutes East 937.14 feet to the point of beginning, according to survey by Stolwyk, McDaniel & Farrenbach Inc., made during the month of June 1969. EXCEPTING THEREFROM Santiago Drive and Bay Meadows Drive as dedicated on said plat of Westchester Village according to survey by Stolwyk, McDaniel & Farrenbach, Inc. made during the month of June, 1969, revised on July 27, 1997 and on July 31, 1997.

PARCEL 2:

The Western part of the subdivision known as Westchester Village, a subdivision in St. Louis County, Missouri, the plat of which is recorded in Plat Book 128 page 30 of the St. Louis County Records and being more particularly described as follows: Beginning at a point in the West line of New Halls Ferry Road 85 feet wide at its intersection with the North line of the subdivision of Westchester Village; thence along the North line of said subdivision, South 89 degrees 55 minutes West 937.14 feet to a point, said point being the point of beginning of the parcel hereby described; thence continuing South 89 degrees 55 minutes West 686 feet to the Northwest corner of said subdivision; thence along the West line of said subdivision, South 0 degrees 07 minutes West 661.73 feet to the Southwest corner of said subdivision, thence North 89 degrees 54 minutes East 806 feet to a point; thence North 0 degrees 06 minutes West 130 feet to a point; thence South 89 degrees 54 minutes West 120 feet to a point; thence North 0 degrees 06 minutes West 531.73 feet more or less to the point of beginning; according to survey by Stolwyk, McDaniel & Farrenbach, Inc., made during the month of June 1969. EXCEPTING THEREFROM Santiago Drive as dedicated on said plat of Westchester Village, according to survey by Stolwyk, McDaniel & Farrenbach during the month of June 1969, revised on July 27, 1997 and on July 31, 1997.

EXHIBIT "B"

1. General taxes due and payable in the year 2003, and special assessments that become a lien after the date hereof.
2. An easement disclosed by an instrument recorded in Book 2245 Page 330.
In favor of: Union Electric Company
3. Restrictions, conditions, and easements (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) contained in instrument(s) recorded in: Plat Book 128 Pages 30 and 31, Amended in Book 6422 Page 347 and Certified Land Corner Document recorded in Book 13756 Page 1568.
4. An easement disclosed by an instrument recorded in Book 6421 Page 21, Book 6431 Page 909 and Book 6482 Page 326.
In favor of: Union Electric Company
5. An easement disclosed by an instrument recorded in Book 6490 Page 355 and Book 6499 Page 820.
In favor of: Laclede Gas Company
6. Easements of the Metropolitan St. Louis Sewer District as shown on plat of dedication of sewer system and facilities in instrument recorded in Book 6554 Page 1035 and Book 6554 Page 1037.
7. Agreement and License to encroach on sewer easement by and between the Metropolitan St. Louis Sewer District and Sapal Associates d/b/a Aspen Woods Apartments recorded in Book 10387 Page 2274.
8. Assessments by the trustees of said subdivision, if any.
9. Rights of parties in possession under any unrecorded leases or month to month tenancies.
10. Deed of Trust dated September 2, 1997 recorded in Book 11274 Page 1667.
11. Financing Statement recorded in Book 11274 Page 1689.